

District of Columbia Code

1981 Edition



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DISTRICT OF COLUMBIA CODE

ANNOTATED

1981 EDITION

With Provision for Subsequent Pocket Parts

CONTAINING THE LAWS, GENERAL AND PERMANENT IN THEIR NATURE,
RELATING TO OR IN FORCE IN THE DISTRICT OF COLUMBIA
(EXCEPT SUCH LAWS AS ARE OF APPLICATION IN THE
DISTRICT OF COLUMBIA BY REASON OF BEING
GENERAL AND PERMANENT LAWS OF THE
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1994, AND NOTES TO DECISIONS
THROUGH MARCH 1, 1995.

VOLUME 4

1995 REPLACEMENT

TITLE 6—HEALTH AND SAFETY

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1995

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USER'S GUIDE

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the District of Columbia Code, a User's Guide has been included in Volume 1 of the Code. This guide contains comments and information on the many features found within the District of Columbia Code intended to increase the usefulness of the Code to the user.

TITLES OF DISTRICT OF COLUMBIA CODE

PART I.—GOVERNMENT OF DISTRICT

Title

1. Administration.
2. District Boards and Commissions.
3. Public Care Systems.
4. Police and Fire Departments.
5. Building Restrictions and Regulations.
6. Health and Safety.
7. Highways, Streets, Bridges.
8. Parks and Playgrounds.
9. Public Buildings and Grounds.
10. Weights, Measures, and Markets.

PART II.—JUDICIARY AND JUDICIAL PROCEDURE

- *11. Organization and Jurisdiction of the Courts.
- *12. Right to Remedy.
- *13. Procedure Generally.
- *14. Proof.
- *15. Judgments and Executions; Fees and Costs.
- *16. Particular Actions, Proceedings and Matters.
- *17. Review.

PART III.—DECEDENTS' ESTATES AND FIDUCIARY RELATIONS

- *18. Wills.
- *19. Descent and Distribution.
- *20. Probate and Administration of Decedents' Estates.
- *21. Fiduciary Relations and the Mentally Ill.

PART IV.—CRIMINAL LAW AND PROCEDURE

22. Criminal Offenses.
- *23. Criminal Procedure.
24. Prisoners and Their Treatment.

PART V.—GENERAL STATUTES

25. Alcoholic Beverages.

*Title has been enacted as law.

Title

26. Banks and Other Financial Institutions.
27. Cemeteries and Crematories.
- *28. Commercial Instruments and Transactions.
29. Corporations.
30. Domestic Relations.
31. Education and Cultural Institutions.
32. Eleemosynary, Curative, Correctional, and Penal Institutions.
33. Food and Drugs.
34. Hotels and Lodging Houses.
35. Insurance.
36. Labor.
37. Libraries.
38. Liens.
39. Military.
40. Motor Vehicles.
41. Partnerships.
42. Personal Property.
43. Public Utilities.
44. Railroads and Other Carriers.
45. Real Property.
46. Social Security.
47. Taxation and Fiscal Affairs.
48. Trademarks and Trade Names.
49. Compilation and Construction of Code.

*Title has been enacted as law.

Table of Contents

Title 6

Health and Safety

CHAPTER	PAGE
1. Public Health	2
2. Vital Records	21
3. Prevention of Blindness in Infants	39
4. Drainage of Lots	47
5. Garbage	52
6. Privies	60
7. Hazardous Waste Management	62
8. Manufacture, Renovation, and Sale of Mattresses	77
9. Environmental Controls	82
10. Animal Control	148
10A. Dangerous Dogs	156
10B. Regulation of Horse-Drawn Carriage Trade	162
11. Weeds and Plant Diseases	171
12. Reports of Cancer and Malignant Neoplastic Diseases	175
13. Federal Government Restaurants	177
14. Office of Emergency Preparedness	178
15. Public Emergencies	187
16. Register of Blind Persons	195
17. Rights of Blind and Physically Disabled Persons	197
18. Interstate Compact on Mental Health	201
19. Rights of Mentally Retarded Citizens	209
20. Mental Health Information	247
21. Child Abuse and Neglect	264
22. Programs for the Aging	287
23. Firearms Control	300
24. Death	338
25. Adult Protective Services	345
26. Prohibition of Buying and Selling of Human Body Parts	357
27. Civil Infractions	358
28. AIDS Health Care	367
29. Litter Control Administration	370
29A. Illegal Dumping Enforcement	378
30. Hazardous Materials Study Commission	384
31. Security and Fire Alarm Systems Regulations	385
32. Multi-Material Recycling Systems	396
33. Hazardous Materials Transportation	399
34. Solid Waste Management and Multi-Material Recycling	404
35. Long-Term Care Ombudsman Program	430
36. Child Care Services Assistance Fund	440
37. Low-Level Radioactive Waste Generator Regulatory Policy	443

TITLE 6. HEALTH AND SAFETY.

Chapter

1. Public Health.....	§§ 6-101 to 6-134.
2. Vital Records.....	§§ 6-201 to 6-228.
3. Prevention of Blindness in Infants.....	§§ 6-301 to 6-320.
4. Drainage of Lots.....	§§ 6-401 to 6-405.
5. Garbage.....	§§ 6-501 to 6-511.
6. Privies.....	§§ 6-601 to 6-604.
7. Hazardous Waste Management.....	§§ 6-701 to 6-738.
8. Manufacture, Renovation, and Sale of Mattresses.....	§§ 6-801 to 6-808.
9. Environmental Controls.....	§§ 6-901 to 6-995.12.
10. Animal Control.....	§§ 6-1001 to 6-1013.
10A. Dangerous Dogs.....	§§ 6-1021 to 6-1025.
10B. Regulation of Horse-Drawn Carriage Trade.....	§§ 6-1031 to 6-1043.
11. Weeds and Plant Diseases.....	§§ 6-1101 to 6-1105.
12. Reports of Cancer and Malignant Neoplastic Diseases.....	§§ 6-1201 to 6-1204.
13. Federal Government Restaurants.....	§ 6-1301.
14. Office of Emergency Preparedness.....	§§ 6-1401 to 6-1409.
15. Public Emergencies.....	§§ 6-1501 to 6-1514.
16. Register of Blind Persons.....	§§ 6-1601 to 6-1604.
17. Rights of Blind and Physically Disabled Persons....	§§ 6-1701 to 6-1709.
18. Interstate Compact on Mental Health.....	§§ 6-1801 to 6-1806.
19. Rights of Mentally Retarded Citizens.....	§§ 6-1901 to 6-1985.
20. Mental Health Information.....	§§ 6-2001 to 6-2076.
21. Child Abuse and Neglect.....	§§ 6-2101 to 6-2138.
22. Programs for the Aging.....	§§ 6-2201 to 6-2251.
23. Firearms Control.....	§§ 6-2301 to 6-2393.
24. Death.....	§§ 6-2401 to 6-2430.
25. Adult Protective Services.....	§§ 6-2501 to 6-2513.
26. Prohibition of Buying and Selling of Human Body Parts.....	§§ 6-2601 to 6-2603.
27. Civil Infractions.....	§§ 6-2701 to 6-2723.
28. AIDS Health Care.....	§§ 6-2801 to 6-2806.
29. Litter Control Administration.....	§§ 6-2901 to 6-2910.
29A. Illegal Dumping Enforcement.....	§§ 6-2911 to 6-2915.
30. Hazardous Materials Study Commission.....	[Repealed].
31. Security and Fire Alarm Systems Regulations.....	§§ 6-3101 to 6-3115.
32. Multi-Material Recycling Systems.....	§§ 6-3201 to 6-3202.
33. Hazardous Materials Transportation.....	§§ 6-3301 to 6-3305.
34. Solid Waste Management and Multi-Material Recycling.....	§§ 6-3401 to 6-3423.
35. Long-Term Care Ombudsman Program.....	§§ 6-3501 to 6-3551.
36. Child Care Services Assistance Fund.....	§§ 6-3601 to 6-3608.
37. Low-Level Radioactive Waste Generator Regulatory Policy.....	§§ 6-3701 to 6-3706.

CHAPTER 1. PUBLIC HEALTH.

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|---|---|
| <p>Sec.
6-101. Commissioner of Public Health — Appointment; duties generally.
6-102. [Repealed].
6-103. Sanitary Inspectors — Appointment; qualifications; subordinates.
6-104. Same — Reports.
6-105. Report by Director.
6-106. Clerks to Director.
6-107. Chief Clerk and Chief Inspector not to act as deputy.
6-108. Assistant Director of Public Health to be physician and discharge duties of health officer during his absence or disability.
6-109. Inspector of Fish and Other Marine Products.
6-110. Certain ordinances of Board of Health legalized — Generally; exceptions.
6-111. Same — Titles.
6-112. Same — Force and effect; exemptions from enforcement; alternative sanctions; adjudication of infractions.
6-113. Same — Alteration, amendment, or repeal.
6-114. Reception, burial, and identification of ashes of certain cremated indigent persons.
6-115. Dairy Inspector may act as Inspector of Livestock.
6-116. Tuberculosis Sanatoria and District of Columbia General Hospital.
6-117. Regulations to prevent spread of communicable diseases.</p> | <p>Sec.
6-118. "Communicable disease" defined.
6-119. Persons believed to be carriers of communicable diseases — Order for removal.
6-120. Same — Detention; expiration of order; continuation; hearing on detention; minors.
6-121. Same — Examination; diagnosis; detention for quarantine; discharge; public hearing.
6-122. Same — Leaving detention without discharge.
6-123. Same — Arrest.
6-124. Access to building for inspection.
6-125. Interference unlawful.
6-126. Violation of § 6-122, 6-124, or 6-125, or rules or regulations promulgated thereunder.
6-127. Exemption for persons relying on spiritual means to cure disease.
6-128. "Director of the Department of Human Services" defined.
6-129. [Repealed].
6-130. Construction.
6-131. Establishment of the Department of Public Health.
6-132. Organization of the Department of Public Health.
6-133. Appointment of Director.
6-134. Establishment of Public Health Coordination Advisory Committee.</p> |
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§ 6-101. Commissioner of Public Health — Appointment; duties generally.

The Mayor of the District of Columbia shall appoint a physician as Commissioner of Public Health, whose duty it shall be, under the direction of the said Mayor, to execute and enforce all laws and regulations relating to the public health and vital statistics, and to perform all such duties as may be assigned to him by said Mayor. (June 11, 1878, 20 Stat. 107, ch. 180, § 8; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; 1973 Ed., § 6-101.)

Cross references. — As to authority of Council to adopt rules and regulations, see § 1-319.

As to Director of Department of Human Services being ex officio member of Anatomical Board, see § 2-1401.

As to duty of Mayor to keep vital records, see § 6-201.

As to authority of the Mayor and Council to adopt rules and regulations relating to health, see §§ 6-113 and 6-117.

As to birth records, see Chapter 2 of this title.

As to duties of Director of Department of Human Services in prevention of blindness of newborn infants, see Chapter 3 of this title.

As to duty of Director of Department of Human Services to certify necessity for connection of vacant lots to public sewers, see § 6-401.

As to issuance of permits to maintain privies, see § 6-602.

As to enforcement of laws and regulations governing manufacture, renovation, and sale of

mattresses, see Chapter 8 of this title.

As to duty of landowners to remove weeds, see § 6-1101.

As to criminal penalty for impersonating inspector of Department of Human Services, see § 22-1305.

As to duties of Director of Department of Human Services concerning persons found guilty under laws against prostitution, see § 22-2703.

As to duties of Director of Department of Human Services concerning interment or disinterment of dead bodies, see §§ 27-117 to 27-125.

As to reports of deaths, see §§ 6-211 and 27-120.

As to marriage records, see § 30-114.

As to duty to examine teachers to determine eligibility for retirement on disability, see § 31-1204.

As to duty of Director of Department of Human Services to adopt and enforce rules and regulations to prevent adulteration of food and drugs, see §§ 33-104 and 33-105.

As to examination of food and drugs, see §§ 33-106 and 33-107.

As to designation of medical inspector to certify to fitness of minor for work permit, see §§ 36-509 and 36-510.

As to duties of Director of Department of Human Services relating to licensing of businesses which operate abattoirs and slaughterhouses, see § 47-2816.

Establishment of the Mayor's Study Commission on the Public Sector Health Care Delivery System. — See Mayor's Order 90-102, July 17, 1990.

Establishment of the Health System Reorganization Office. — See Mayor's Order 90-105, July 25, 1990.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia,

respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Office of Director of Public Health abolished. — Section 1 of the Act of August 1, 1950, 64 Stat. 393, ch. 513, provided that the Health Officer of the District of Columbia would be known as the Director of Public Health. The Health Department of the District of Columbia, including the office of the head thereof, was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 57 of the Board of Commissioners, dated June 30, 1953, and Reorganization Order No. 52, dated June 30, 1953, combined and redesignated Organization Order No. 141, dated February 11, 1964, established under the direction and control of a Commissioner, a Department of Public Health headed by a Director, for the purpose of planning, implementing, and directing public health and hospital care programs, and for performing certain other allied medical and paramedical functions. The Anatomical Board was established under the direction and control of the Director of Public Health consisting of members as prescribed in the D. C. Code. The Order prior to redesignation abolished the previously existing Health Department, Gallinger Hospital, Glenn Dale Sanatorium, and the Anatomical Board and transferred their functions and positions to the new Department. The organization of the new Department was set out in the Order. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions stated in Organization Order No. 141 were transferred to the Director of the Department of Human Resources by Commissioner's Order No. 69-96, dated March 7, 1969, as amended by Commissioner's Order No. 70-83, dated March 6, 1970. The Department of Human Resources was replaced by Reorganization Plan No. 2 of 1979, dated February 21, 1980, which Plan established the Department of Human Services.

Reorganization Plan No. 2 of 1979 established the Office of Public Health, headed by a Commissioner of Public Health, in the Department of Human Services.

Department of Human Services established. — Reorganization Plan No. 3 of 1986 re-established the Department of Human Services, headed by a Director.

Death certificate is a public record and is admissible in evidence. *Labofish v. Berman*, 55 F.2d 1022 (D.C. Cir. 1932).

§ 6-102. Same — Enforcement of vital statistics regulations.

Repealed. Oct. 8, 1981, D.C. Law 4-34, § 30(a), 28 DCR 3271.

Legislative history of Law 4-34. — Law 4-34, the "Vital Records Act of 1981," was introduced in Council and assigned Bill No. 4-161, which was referred to the Committee on Human Services. The Bill was adopted on first and

second readings on June 16, 1981, and June 30, 1981, respectively. Signed by the Mayor on July 20, 1981, it was assigned Act No. 4-58 and transmitted to both Houses of Congress for its review.

§ 6-103. Sanitary Inspectors — Appointment; qualifications; subordinates.

There may be appointed by the Mayor of the District of Columbia, on the recommendation of the Director of the Department of Human Services, a reasonable number of Sanitary Inspectors for said District, to hold such appointment at any 1 time, of whom 2 may be physicians, and 1 shall be a person skilled in the matters of drainage and ventilation; and said Mayor may remove any of the subordinates, and from time to time may prescribe the duties of each. (June 11, 1878, 20 Stat. 107, ch. 180, § 9; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; 1973 Ed., § 6-104.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat.

818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Office of Director of Public Health abolished. — See note to § 6-101.

§ 6-104. Same — Reports.

Said Inspectors shall be respectively required to make, at least once in 2 weeks, a report to said Director of the Department of Human Services, in writing, of their inspections, which shall be preserved on file. (June 11, 1878, 20 Stat. 107, ch. 180, § 9; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; 1973 Ed., § 6-105.)

Office of Director of Public Health abolished. — See note to § 6-101.

§ 6-105. Report by Director.

Said Director of the Department of Human Services shall report in writing annually to said Mayor of the District of Columbia, and so much oftener as he shall require. (June 11, 1878, 20 Stat. 107, ch. 180, § 9; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; 1973 Ed., § 6-106.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat.

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Office of Director of Public Health abolished. — See note to § 6-101.

§ 6-106. Clerks to Director.

The Mayor of the District of Columbia may appoint, on the like recommendation of the Director of the Department of Human Services, a reasonable number of clerks, but no greater number shall be appointed, and no more persons shall be employed under said Director of the Department of Human Services, than the public interests demand and the appropriation shall justify. (June 11, 1878, 20 Stat. 107, ch. 180, § 10; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; 1973, Ed., § 6-107.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat.

818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Office of Director of Public Health abolished. — See note to § 6-101.

§ 6-107. Chief Clerk and Chief Inspector not to act as deputy.

After April 2, 1938, neither the Chief Clerk nor the Chief Inspector of the Department of Human Services of the District of Columbia shall act as a deputy to the Director of the Department of Human Services of said District. (July 14, 1892, 27 Stat. 162, ch. 171, § 1; April 2, 1938, 52 Stat. 153, ch. 60; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; 1973 Ed., § 6-108.)

Office of Director of Public Health abolished. — See note to § 6-101.

§ 6-108. Assistant Director of Public Health to be physician and discharge duties of health officer during his absence or disability.

The Assistant Director of Public Health shall be a physician, and during the absence of or disability of the Director of Public Health shall act as Director of Public Health and discharge the duties incident to that position. (Mar. 4, 1913, 37 Stat. 961, ch. 150; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; 1973 Ed., § 6-109.)

Office of Director of Public Health abolished. — See note to § 6-101.

§ 6-109. Inspector of Fish and Other Marine Products.

The duties and the authority conferred by law upon the Inspector of Fish and Other Marine Products on May 26, 1908, are hereby vested in each of the Sanitary and Food Inspectors. (May 26, 1908, 35 Stat. 299, ch. 198; 1973 Ed., § 6-110.)

§ 6-110. Certain ordinances of Board of Health legalized — Generally; exceptions.

The ordinances of the late Board of Health of the District of Columbia, as revised, amended, and adopted, November 19, 1875, entitled "An ordinance to revise, consolidate, and amend the ordinances of the Board of Health, to declare what shall be deemed nuisances injurious to health, and to provide for the removal thereof," as printed in the report of said late Board of Health made to the 1st session of the 44th Congress, being Executive Document No. 1, part 8, are hereby legalized; and the respective penalties therein prescribed for violations thereof may be imposed and enforced for the respective offenses therein described, excepting the sections of said ordinance following, namely: Sections 7, 9, and 14, which said sections are not hereby legalized. (Apr. 24, 1880, 21 Stat. 304, Res. No. 25, § 1; 1973 Ed., § 6-111.)

Section references. — This section is referred to in §§ 6-111, 6-112, and 6-113.

§ 6-111. Same — Titles.

The ordinances, rules, and regulations of said late Board of Health contained in the report mentioned in § 6-110 and printed in the said Executive Document therein mentioned, namely:

(1) "An ordinance to amend an ordinance to prevent domestic animals from running at large within the Cities of Washington and Georgetown, passed by the Board of Health May 19, 1871";

(2) "An ordinance to prevent the sale of unwholesome food, in the Cities of Washington and Georgetown";

(3) "An ordinance to provide for the inspection of streets, food, livestock, fish and other marine products, in the Cities of Washington and Georgetown, and to define the duties of Inspectors and other officers of the Board of Health";

(4) "An ordinance to amend § 10 of the Code so as to read";

(5) "An ordinance to amend an ordinance passed May 13, 1873, to read as follows";

(6) "An ordinance to prevent committing or creating nuisances in or about public urinal or urinals located within the Cities of Washington and Georgetown";

(7) "Rules and regulations in regard to smallpox";

(8) Regulations and ordinances cited in paragraphs (1) through (7) of this section are legalized and made valid; and the penalties therein provided respectively for violations thereof, may be imposed and enforced for the violations of the same respectively as provided by § 27 of the ordinances passed November 19, 1875. (Apr. 24, 1880, 21 Stat. 305, Res. No. 25, § 2; 1973 Ed., § 6-112; Oct. 8, 1981, D.C. Law 4-34, § 29(b), 28 DCR 3271.)

Cross references. — As to vital statistics, see §§ 6-101 et seq. and 6-201 et seq.

Section references. — This section is referred to in §§ 6-112 and 6-113.

Legislative history of Law 4-34. — See note to § 6-102.

Cited in *Labofish v. Berman*, 55 F.2d 1022 (D.C. Cir. 1932).

§ 6-112. Same — Force and effect; exemptions from enforcement; alternative sanctions; adjudication of infractions.

Except as provided in § 6-111, the ordinances of the late Board of Health of the District of Columbia, as legalized by §§ 6-110 and 6-111, are hereby declared to have the same force and effect within the District of Columbia as if enacted by Congress in the 1st instance, and the powers and duties imposed upon the late Board of Health, in and by the said ordinances, are hereby conferred upon the Director of the Department of Human Services of said District, and all prosecutions for violations of said ordinances and regulations shall be in the Superior Court of the District of Columbia in the name of the said District: Provided, that said regulations shall not be enforced against industries established on Aug. 7, 1894, which are not a nuisance in fact. Civil fines, penalties, and fees may be imposed as alternative sanctions for any infractions of the late Board of Health of the District of Columbia, as legalized by §§ 6-110 and 6-111, or any rules or regulations issued under the authority of those sections, pursuant to subchapters I through III of Chapter 27 of this title. Adjudication of any infraction shall be pursuant to subchapters I through III of Chapter 27 of this title. (Aug. 7, 1894, 28 Stat. 257, ch. 232; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 6-113; Oct. 5, 1985, D.C. Law 6-42, § 478, 32 DCR 4450.)

Legislative history of Law 6-42. — Law 6-42, the "Department of Consumer and Regu-

latory Affairs Civil Infractions Act of 1985," was introduced in Council and assigned Bill No.

6-187, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 25, 1985, and July 9, 1985, respectively. Signed by the Mayor on July 16, 1985, it was assigned

Act No. 6-60 and transmitted to both Houses of Congress for its review.

Office of Director of Public Health abolished. — See note to § 6-101.

§ 6-113. Same — Alteration, amendment, or repeal.

The Council of the District of Columbia is hereby authorized and empowered, in making regulations under the authority conferred by Congress, to alter, amend, or repeal any of the ordinances of the late Board of Health of said District which were legalized by §§ 6-110 and 6-111, whenever in its judgment the public interest requires it. (Feb. 28, 1889, 30 Stat. 1390, Joint Res. No. 21; 1973 Ed., § 6-114.)

Cross references. — As to authority of Council to make and enforce police regulations for protection of health, see § 1-319.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(133) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Health laws and ordinances are to be liberally construed. Little v. District of Columbia, App. D.C., 62 A.2d 874 (1948), aff'd, 178 F.2d 13 (D.C. Cir. 1949), 339 U.S. 1, 70 S. Ct. 468, 94 L. Ed. 599 (1950).

Unless they appear to violate constitutional right. — When health laws and ordinances appear to violate a constitutional right, courts must carefully weigh the value of the end accomplished. When the abatement of a nuisance is provided for only after notice and hearing, health officers cannot inspect without the ordinary preliminary steps for a search, in the absence of immediate danger or nuisance per se. Little v. District of Columbia, App. D.C., 62 A.2d 874 (1948), aff'd, 178 F.2d 13 (D.C. Cir. 1949), 339 U.S. 1, 70 S. Ct. 468, 94 L. Ed. 599 (1950).

Collection and disposal of garbage as health measure. — It is within the police power of the District of Columbia to control and regulate the manner of collection and disposition of garbage, refuse, and filth, and in so doing, the District may provide for the inspection of premises as a health measure. Little v. District of Columbia, App. D.C., 62 A.2d 874 (1948), aff'd, 178 F.2d 13 (D.C. Cir. 1949), 339 U.S. 1, 70 S. Ct. 468, 94 L. Ed. 599 (1950).

§ 6-114. Reception, burial, and identification of ashes of certain cremated indigent persons.

The Director of the Department of Human Services is authorized to provide and furnish proper containers for the reception, burial, and identification of the ashes of all human bodies of indigent persons that are cremated at the public crematorium, which ashes remain unclaimed after 12 months from date of such cremation. (May 21, 1928, 45 Stat. 669, ch. 659; July 3, 1930, 46 Stat. 975, ch. 848; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; 1973 Ed., § 6-115.)

Office of Director of Public Health abolished. — See note to § 6-101.

§ 6-115. Dairy Inspector may act as Inspector of Livestock.

Any Inspector of Dairies and Dairy Farms may act as Inspector of Livestock when directed by the Director of the Department of Human Services. (Mar. 2, 1911, 36 Stat. 993, ch. 192; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; 1973 Ed., § 6-116.)

Office of Director of Public Health abolished. — See note to § 6-101.

§ 6-116. Tuberculosis Sanatoria and District of Columbia General Hospital.

The following hospital and sanatoria, on and after July 1, 1937, shall be under the direction and control of the Department of Human Services of the District of Columbia and subject to the supervision of the Mayor of the District of Columbia: Tuberculosis Sanatoria and District of Columbia General Hospital. (June 29, 1937, 50 Stat. 376, ch. 403, § 1; 1973 Ed., § 6-117.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Health Department abolished. — The Health Department of the District of Columbia, including the office of the head thereof, was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 57 of the Board of Commissioners, dated June 30, 1953, and Reorganization Order No. 52, dated June 30, 1953, combined and redesignated Organization Order No. 141, dated February 11, 1964, established under the direction and control of a Commissioner, a Department of Public Health headed by a Director, for the purpose of planning, implementing, and directing public health and hospital care programs, and for

performing certain other allied medical and paramedical functions. The Anatomical Board was established under the direction and control of the Director of Public Health consisting of members as prescribed in the D.C. Code. Prior to redesignation, the Order abolished the previously existing Health Department, Gallinger Hospital, Glenn Dale Sanatorium, and the Anatomical Board, and transferred their functions and positions to the new Department. The organization of the new Department was set out in the Order. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions stated in Organization Order No. 141 were transferred to the Director of the Department of Human Resources by Commissioner's Order No. 69-96, dated March 7, 1969, as amended by Commissioner's Order No. 70-83, dated March 6, 1970. The Department of Human Resources was replaced by Reorganization Plan No. 2 of 1979, dated February 21, 1980, which Plan established the Department of Human Services.

Tuberculosis Hospital and Gallinger Municipal Hospital abolished. — The Tuberculosis Hospital and Gallinger Municipal Hospital were abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 57 as amended, redesignated as Organization Order No. 141 and amended, established under the direction and control of a Commissioner, a Department of Public Health headed by a Director, for the purpose of planning, implementing, and directing public health and hospital care programs, and for

performing certain other allied medical functions. Prior to its redesignation, the Order abolished the previously existing Gallinger Municipal Hospital and transferred all of its positions and functions to the new Department. It further provided that within the Department, the District of Columbia General Hospital would perform all functions previously performed by Gallinger Municipal Hospital. Functions of the Department of Public Health as set forth in Organization Order No. 141 were transferred to the Director of the Department of Human Resources by Commissioner's Order

No. 69-96, dated March 7, 1969, as amended by Commissioner's Order No. 70-83, dated March 6, 1970. The Department of Human Resources was replaced by Reorganization Plan No. 2 of 1979, dated February 21, 1980, which Plan established the Department of Human Services.

Recovery of moneys from patient. — The statute of limitations does not apply to a suit brought by the District of Columbia to recover moneys expended on treating a patient for tuberculosis. *Weiss v. District of Columbia*, App. D.C., 263 A.2d 638 (1970).

§ 6-117. Regulations to prevent spread of communicable diseases.

(a) The Mayor may, upon the advice of the Commissioner of Public Health and pursuant to subchapter I of Chapter 15 of Title 1, issue rules to prevent and control the spread of communicable diseases, environmentally or occupationally related diseases, and other diseases or medical conditions that the Commissioner of Public Health has advised should be monitored for epidemiological or other public health reasons. These rules may include, but shall not necessarily be limited to:

- (1) A list of reportable diseases and conditions;
- (2) Reporting procedures; and
- (3) Requirements and procedures for restriction of movement, isolation, and quarantine not inconsistent with §§ 6-117 to 6-130.

(b)(1) Except as provided in paragraph (2) of this subsection, the Commissioner of Public Health shall use the records incident to the case of a disease or medical condition reported under §§ 6-117 to 6-130 for statistical and public health purposes only, and identifying information contained in these records shall be disclosed only when essential to safeguard the physical health of others. No person shall otherwise disclose or redisclose identifying information derived from these records unless:

- (A) The person reported gives his or her prior written permission; or
- (B) A court finds, upon clear and convincing evidence and after granting the person reported an opportunity to contest the disclosure, that disclosure:
 - (i) Is essential to safeguard the physical health of others; or
 - (ii) Would afford evidence probative of guilt or innocence in a criminal prosecution.

(2) The prohibitions set forth in paragraph (1) of this subsection shall not apply to the exchange and use of information effected under Chapter 13 of Title 2, Chapter 21 of this title, and Chapter 23 of Title 16. (Aug. II, 1939, 53 Stat. 1408, ch. 601, § 1; Aug. 8, 1946, 60 Stat. 919, ch. 871, § 1; 1973 Ed., § 6-118; Feb. 21, 1986, D.C. Law 6-83, § 3(a), 32 DCR 7276.)

Cross references. — As to authority of Council to make health regulations, see § 1-319.

ferred to in §§ 6-118, 6-121, 6-123 to 6-128, 6-130, and 31-2406.

Section references. — This section is re-

Legislative history of Law 6-83. — Law 6-83, the "Preventive Health Services Amend-

ments Act of 1985," was introduced in Council and assigned Bill No. 6-99, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on November 5, 1985, and November 19, 1985, respectively. Signed by the Mayor on November 27, 1985, it was assigned Act No. 6-108 and transmitted to both Houses of Congress for its review.

References in text. — Sections 2-1301 to 2-1343, which are part of Chapter 13 of Title 2 referred to in subsection (b)(2), have been repealed.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(134) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commis-

sioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Section constitutes a legitimate exercise of police power. Huffman v. District of Columbia, App. D.C., 39 A.2d 558 (1944); District of Columbia v. Huffman, App. D.C., 42 A.2d 502 (1945).

Delegation of power not too broad. — This section is not objectionable as containing language too broad in its delegation of power to the Mayor and the Council. Huffman v. District of Columbia, App. D.C., 39 A.2d 558 (1944); District of Columbia v. Huffman, App. D.C., 42 A.2d 502 (1945).

§ 6-118. "Communicable disease" defined.

For the purposes of §§ 6-117 to 6-130, the term "communicable disease" means that term as it is defined in § 8-5:103 of the District of Columbia Health Regulations (22 DCMR 299) or by the Mayor pursuant to § 6-117. (Aug. 11, 1939, 53 Stat. 1408, ch. 601, § 2; Aug. 8, 1946, 60 Stat. 919, ch. 871, § 2; 1973 Ed., § 6-119; Feb. 21, 1986, D.C. Law 6-83, § 3(b), 32 DCR 7276.)

Section references. — This section is referred to in §§ 6-117, 6-121, 6-123 to 6-128, 6-130, and 31-2406.

Legislative history of Law 6-83. — See note to § 6-117.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(135) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 6-119. Persons believed to be carriers of communicable diseases — Order for removal.

Whenever the Director of the Department of Human Services has probable cause to believe that any person is affected with any communicable disease or is a carrier of communicable disease and that the continuance of such person in the place where he may be is likely to be dangerous to the lives or health of other persons, or that by reason of the noncooperation or carelessness of such

person the public health is likely to be endangered, the Director of the Department of Human Services may by written order direct the removal by any designated officer or employee of the Department of Human Services or by any member of the Metropolitan Police force of such person to and the detention of such person in any place or institution in the District of Columbia designated by the Director of the Department of Human Services, or any institution located without the District of Columbia which may be designated by the Director of the Department of Human Services, and which is under the supervision of the government of the District of Columbia or any agency thereof. Such officer, employee, or member so designated in such order shall take such person into his custody and shall remove such person to such place or institution as may be designated in such order. Such officer, employee, or member shall immediately make known to such person the contents of such order, and also shall deliver to such person a true copy of such order. (Aug. 11, 1939, ch. 601, § 3; Aug. 8, 1946, 60 Stat. 919, ch. 871, § 2; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; 1973 Ed., § 6-119a.)

Section references. — This section is referred to in §§ 6-117, 6-118, 6-120, 6-121, 6-123 to 6-128, 6-130, and 31-2406.

Office of Director of Public Health abolished. — See note to § 6-101.

Health Department abolished. — See note to § 6-116.

Habeas corpus is available to a person being detained in the hospital section of the jail on the grounds that he would endanger health if left at large, to test the place of detention. *Benton v. Reid*, 231 F.2d 780 (D.C. Cir. 1956).

§ 6-120. Same — Detention; expiration of order; continuation; hearing on detention; minors.

A copy of the order provided for in § 6-119 hereof shall be delivered to the person in charge of such place or institution to which the person taken into custody may be removed and shall constitute the authority for the detention of such person in such place or institution until such order expires or until such person is discharged in the manner set forth in this section or § 6-121. Such order shall expire 48 hours (exclusive of Sundays and holidays) after such officer, employee, or member shall take into his custody such person as provided in § 6-119, unless it shall be continued in force and effect by a judge of the Superior Court of the District of Columbia, or unless such detained person shall stipulate in writing that the order be continued in force and effect. Such order shall be continued in force and effect if it shall appear to said judge by affidavit that the probable cause, required by § 6-119, exists. If the judge shall continue in force and effect the order of the Director of the Department of Human Services, the judge at that time shall set a date for a hearing upon the question of whether the person detained is at the time of such hearing affected with any communicable disease or is a carrier of communicable disease and, if so affected, upon the further question whether his release would be likely to endanger the lives or health of any other person. If such person be not sooner discharged such hearing shall be had within 10 days of the date of the order of the Court continuing in force and effect the order of the Director of the Department of Human Services unless such hearing be continued by the

Court, or unless the detained person shall, in writing, waive such hearing, which waiver shall be filed with the Court. Such hearing shall be in or out of the presence of the detained person, in the discretion of the Court. If, after such hearing, the Court shall find that the detained person is not affected with any communicable disease and is not a carrier of communicable disease, or that the discharge of such person, even though affected with, or a carrier of, a communicable disease is not likely to endanger the lives or health of any other person the Court shall order such detained person to be discharged, otherwise the Court shall continue in force and effect the order of the Director of the Department of Human Services until such person be discharged in the manner set forth in § 6-121. If a minor is detained pursuant to this section or § 6-123 hereof, or is found guilty and sentence is suspended as provided in § 6-126 hereof, and such minor is in need of treatment for the communicable disease with which he is affected or of which he is a carrier, the Court is empowered to authorize the Director of the Department of Human Services to administer such treatment or cause the same to be administered. No person under 18 years of age detained under § 6-119, 6-120, 6-121, or 6-123, shall be detained in a room in which a person over that age is so detained. (Aug. 11, 1939, ch. 601, § 4; Aug. 8, 1946, 60 Stat. 919, ch. 871, § 2; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 6-119b.)

Section references. — This section is referred to in §§ 6-117, 6-118, 6-121, 6-122, 6-123 to 6-128, 6-130, and 31-2406.

Office of Director of Public Health abolished. — See note to § 6-101.

Detention in jail not authorized. — This section does not authorize the detention of a person who would endanger public health if left at large in a place of imprisonment or a jail. *Benton v. Reid*, 231 F.2d 780 (D.C. Cir. 1956).

Congress did not intend to enact a statute providing that a person who would endanger public health if left at large, but who was neither indicted for nor convicted of any crime, could be confined in a penal institution to suffer the social stigma and bad associations resulting therefrom. *Benton v. Reid*, 231 F.2d 780 (D.C. Cir. 1956).

§ 6-121. Same — Examination; diagnosis; detention for quarantine; discharge; public hearing.

It shall be the duty of the Director of the Department of Human Services to make or cause to be made by a physician such examination or examinations of such person as may be necessary to determine the existence or nonexistence of such communicable disease in such person or whether such person is a carrier of communicable disease. The diagnosis resulting from such examination or examinations shall be reduced to writing and signed by such examining physician within 10 days after the removal of such person to such place or institution and a copy thereof shall be filed in the office of the person in charge of such place or institution and a copy in the office of the Director of the Department of Human Services. If such diagnosis does not disclose that such person is affected with such communicable disease or that such person is a carrier of communicable disease, such person shall be discharged from such place or institution forthwith. If the diagnosis does disclose that such person is affected with such communicable disease or that such person is a carrier of

communicable disease, the person in charge of the place or institution to which the infected person has been removed shall, subject to the provisions of § 6-120 detain such person for such reasonable time as may be fixed by rule or regulation under the authority of §§ 6-117 to 6-130 as is deemed necessary in the interest of public health and safety for the isolation, quarantine, and restriction of movement of persons affected by the particular communicable disease or of persons found to be carriers of the particular communicable disease, unless sooner discharged by the Director of the Department of Human Services or the Superior Court of the District of Columbia. A person so detained, however, may apply at any time to the person in charge of such place or institution for his discharge, and the person in charge of such place or institution shall deliver the application for discharge to the Director of the Department of Human Services, who shall give to such person an opportunity to be heard before the Director of the Department of Human Services. If after hearing held by the Director of the Department of Human Services, the Director of the Department of Human Services be of the opinion that such person is not affected with such communicable disease and that such person is not a carrier of communicable disease, then such person shall be discharged. If denied his discharge such detained person may apply to the Superior Court of the District of Columbia for such discharge and the hearing on such application shall be in or out of the presence of the detained person, in the discretion of the Court. Only such persons as have a direct interest in the case and their representatives shall be admitted to any hearing held pursuant to this section or § 6-120: Provided, that if the detained person shall request a public hearing then the general public shall be admitted thereto. (Aug. 11, 1939, ch. 601, § 5; Aug. 8, 1946, 60 Stat. 920, ch. 871, § 2; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 6-119c; Feb. 21, 1986, D.C. Law 6-83, § 3(c), 32 DCR 7276.)

Section references. — This section is referred to in §§ 6-117, 6-118, 6-120, 6-122, 6-123 to 6-128, 6-130, and 31-2406.

Legislative history of Law 6-83. — See note to § 6-117.

Office of Director of Public Health abolished. — See note to § 6-101.

§ 6-122. Same — Leaving detention without discharge.

It shall be unlawful for a person detained in a place or institution pursuant to an order of the Director of the Department of Human Services to leave said place or institution unless discharged in the manner provided in § 6-120 or 6-121. (Aug. 11, 1939, ch. 601, § 6; Aug. 8, 1946, 60 Stat. 921, ch. 871, § 2; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; 1973 Ed., § 6-119d.)

Section references. — This section is referred to in §§ 6-117, 6-118, 6-121, 6-123 to 6-128, 6-130, and 31-2406.

Office of Director of Public Health abolished. — See note to § 6-101.

§ 6-123. Same — Arrest.

(a) In aid of the powers vested in the Director of the Department of Human Services to cause the removal to and detention in a place or institution of a person who is affected or is believed, upon probable cause, to be affected with any communicable disease or is or is believed, upon probable cause, to be a carrier of communicable disease as provided in §§ 6-117 to 6-130, the Superior Court of the District of Columbia, or any judge thereof, is authorized to issue a warrant for the arrest of such person and his removal to a place or institution as defined in § 6-119, which warrant shall be directed to the Chief of Police. When such person has been removed to such place or institution under authority of a warrant issued pursuant to this section, such person shall not be discharged from such place or institution except in the manner provided in § 6-121.

(b) No such warrant of arrest and removal shall be issued except upon probable cause supported by affidavit or affidavits particularly describing the person to be taken, which said affidavit or affidavits shall set forth the facts tending to establish the grounds of the application or probable cause for believing that they exist.

(c) A warrant may in all cases be served by the Chief of Police or by any officer or member of the Metropolitan Police, but by no other person, except in aid of the officer on his requiring it, he being present and acting in its execution.

(d) The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute the warrant, if, after notice of his authority and purpose, he is refused admittance.

(e) A warrant must be returned to the Court within 10 days after its date; after the expiration of this time the warrant, unless executed, is void.

(f) It shall be the duty of the said Court to maintain and keep records of all warrants issued and the returns thereon. (Aug. 11, 1939, ch. 601, § 7; Aug. 8, 1946, 60 Stat. 921, ch. 871, § 2; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 6-119e.)

Section references. — This section is referred to in §§ 6-117, 6-118, 6-120, 6-121, 6-124 to 6-128, 6-130, and 31-2406.

Office of Director of Public Health abolished. — See note to § 6-101.

Office of Major and Superintendent of Metropolitan Police abolished. — The Office of the Major and Superintendent of Metropolitan Police was abolished and all functions of that office transferred to and vested in the Chief of Police. The Assistant Superintendent, Executive Officer of the Metropolitan Police

Department was designated "Deputy Chief of Police, Executive Officer"; the Assistant Superintendent of the Metropolitan Police in command of the Detective Bureau was designated "Deputy Chief of Police, Chief of Detectives"; and each other Assistant Superintendent of the Metropolitan Police was designated "Deputy Chief of Police" by Reorganization Order No. 7, dated September 16, 1952. Reorganization Order No. 7 was replaced by Organization Order No. 153, dated November 10, 1966.

§ 6-124. Access to building for inspection.

The Director of the Department of Human Services may, without fee or hindrance, enter, examine, and inspect all vessels, premises, grounds, struc-

tures, buildings, and every part thereof in the District of Columbia for the purpose of carrying out the provisions of §§ 6-117 to 6-130 and the rules and regulations issued hereunder. The owner or his agent or representative and the lessee or occupant of any such vessel, premises, grounds, structure, or building, or part thereof, and every person having the care and management thereof shall at all times when required by any such officer or employee give them free access thereto and refusal so to do shall be punishable as a violation of §§ 6-117 to 6-128. (Aug. 11, 1939, ch. 601, § 8; Aug. 8, 1946, 60 Stat. 921, ch. 871, § 2; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; 1973 Ed., § 6-119f; Feb. 21, 1986, D.C. Law 6-83, § 3(d), 32 DCR 7276.)

Section references. — This section is referred to in §§ 6-117, 6-118, 6-121, 6-123, 6-125 to 6-128, 6-130, and 31-2406.

Legislative history of Law 6-83. — See note to § 6-117.

Office of Director of Public Health abolished. — See note to § 6-101.

§ 6-125. Interference unlawful.

It shall be unlawful for any person knowingly to obstruct, resist, oppose, or interfere with any person performing any duty or function under the authority of §§ 6-117 to 6-130 or any rule or regulation promulgated thereunder. (Aug. 11, 1939, ch. 601, § 9; Aug. 8, 1946, 60 Stat. 922, ch. 871, § 2; 1973 Ed., § 6-119g; Feb. 21, 1986, D.C. Law 6-83, § 3(e), 32 DCR 7276.)

Section references. — This section is referred to in §§ 6-117, 6-118, 6-120, 6-121, 6-123, 6-124, 6-126 to 6-128, 6-130, and 31-2406.

Legislative history of Law 6-83. — See note to § 6-117.

§ 6-126. Violation of § 6-122, 6-124, or 6-125, or rules or regulations promulgated thereunder.

Any person who willfully violates § 6-122, 6-124, or 6-125 or who willfully discloses, receives, uses, or permits the use of information in violation of § 6-117(b) shall be guilty of a misdemeanor and, upon conviction, subject to a fine not exceeding \$5,000, imprisonment for not more than 90 days, or both. Any person who willfully violates any rule or regulation issued pursuant to §§ 6-117 to 6-130 shall be guilty of a misdemeanor and, upon conviction, subject to a fine not exceeding \$1,000, imprisonment for not more than 30 days, or both. All prosecutions for violations of § 6-122, 6-124 or 6-125 or the rules and regulations issued pursuant to §§ 6-117 to 6-130 shall be in the Criminal Division of the Superior Court of the District of Columbia, in the name of the District of Columbia upon information filed by the Corporation Counsel of the District of Columbia or any of his assistants. The Court may impose conditions upon any person found guilty under the aforesaid provisions and so long as such person shall comply therewith to the satisfaction of the Court the imposition or execution of sentence may be suspended for such period as the Court may direct; and the Court may at or before the expiration of such period vacate such sentence or cause it to be executed. Conditions thus imposed by the

Court may include submission to medical and mental examination, diagnosis, and treatment by proper public health and welfare authorities or by any licensed physician approved by the Court, and such other terms and conditions as the Court may deem best for the protection of the community and the punishment, control, and rehabilitation of the defendant. The Director of the Department of Human Services of the District of Columbia, the Metropolitan Police force, and employees of the Department of Human Services are authorized and directed to perform such duties as may be directed by the Court in effectuating compliance with the conditions so imposed upon any defendant. (Aug. 11, 1939, ch. 601, § 10; Aug. 8, 1946, 60 Stat. 922, ch. 871, § 2; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 6-119h; Feb. 21, 1986, D.C. Law 6-83, § 3(f), 32 DCR 7276.)

Section references. — This section is referred to in §§ 6-117, 6-118, 6-121, 6-123 to 6-125, 6-127, 6-128, 6-130, and 31-2406.

Legislative history of Law 6-83. — See note to § 6-117.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(136) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Office of Director of Public Health abolished. — See note to § 6-101.

Board of Public Welfare abolished. — The Board of Public Welfare was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Reorganization Order No. 58 as amended, redesignated as Organization Order No. 140 and amended, established under the direction and control of a Commissioner, a Department of Public Welfare, headed by a Director with the purpose of planning, implementing and directing public welfare programs. Reorganization Order No. 58 provided that the previously existing Board of Public Welfare would be abolished. That Order also transferred specified functions of the former board to the Department of Public Health and the Department of Public Welfare. Functions of the Department of Public Welfare and of the Department of Public Health as set forth in Organization Order Nos. 140 and 141, respectively, were transferred to the Director of the Department of Human Resources by Commissioner's Order No. 69-96, dated March 7, 1969, as amended by Commissioner's Order No. 70-83, dated March 6, 1970. The Department of Human Resources was replaced by the Department of Human Services by Reorganization Plan No. 2 of 1979, dated February 21, 1980.

§ 6-127. Exemption for persons relying on spiritual means to cure disease.

With respect to all persons who, either on behalf of themselves or their minor children or wards, rely in good faith upon spiritual means or prayer in the free exercise of religion to prevent or cure disease, nothing in §§ 6-117 to 6-130 or any rule or regulation issued pursuant to §§ 6-117 to 6-130 shall have the effect of requiring or giving any health officer or other person the right to compel any such person, minor child or ward, to go to or be confined in a

hospital or other medical institution unless no other place for quarantine of such person, minor child or ward can be secured, nor to compel any such person, child or ward to submit to any medical treatment. (Aug. 11, 1939, ch. 601, § 11; Aug. 8, 1946, 60 Stat. 922, ch. 871, § 2; 1973 Ed., § 6-119i; Feb. 21, 1986, D.C. Law 6-83, § 3(g), 32 DCR 7276.)

Section references. — This section is referred to in §§ 6-117, 6-118, 6-121, 6-123 to 6-126, 6-128, 6-130, and 31-2406.

Legislative history of Law 6-83. — See note to § 6-117.

§ 6-128. “Director of the Department of Human Services” defined.

Wherever the term “Director of the Department of Human Services” is used in §§ 6-117 to 6-130 it shall mean the Director of the Department of Human Services of the District of Columbia and his duly authorized agents. (Aug. 11, 1939, ch. 601, § 12; Aug. 8, 1946, 60 Stat. 922, ch. 871, § 2; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; 1973 Ed., § 6-119j.)

Section references. — This section is referred to in §§ 6-117, 6-118, 6-121, 6-123 to 6-127, 6-130, and 31-2406.

Office of Director of Public Health abolished. — See note to § 6-101.

§ 6-129. Immediate treatment of minor with venereal disease.

Repealed. Feb. 21, 1986, D.C. Law 6-83, § 7(a), 32 DCR 7276.

Legislative history of Law 6-83. — See note to § 6-117.

§ 6-130. Construction.

Each and every provision of §§ 6-117 to 6-130 shall be constructed liberally in aid of the powers vested in the public authorities looking to the protection of the public health, comfort, and welfare and not by way of limitation. (Aug. 11, 1939, ch. 601, § 14; Aug. 8, 1946, 60 Stat. 922, ch. 871, § 2; Oct. 11, 1963, 77 Stat. 246, Pub. L. 88-137, § 1; 1973 Ed., § 6-119k.)

Section references. — This section is referred to in §§ 6-117, 6-118, 6-121, 6-123 to 6-128, and 31-2406.

§ 6-131. Establishment of the Department of Public Health.

There is established in the Executive Branch of the Government of the District of Columbia a Department of Public Health, which shall have as its responsibility the planning, development and implementation of the delivery of health care services to all District of Columbia residents. (Mar. 13, 1992, D.C. Law 9-182, § 2, 39 DCR 8203.)

Legislative history of Law 9-182. — Law 9-182, the “Department of Public Health Establishment Act of 1992,” was introduced in Council and assigned Bill No. 9-40, which was referred to the Committee on Human Services. The Bill was adopted on first and second read-

ings on July 7, 1992, and October 6, 1992, respectively. Signed by the Mayor on November 2, 1992, it was assigned Act No. 9-302 and transmitted to both Houses of Congress for its review. D.C. Law 9-182 became effective on March 13, 1993.

§ 6-132. Organization of the Department of Public Health.

(a) Pursuant to subchapter VIII of Chapter 2 of Title 1, the Mayor shall prepare and transmit to the Council a reorganization plan establishing a Department of Public Health no later than October 1, 1993.

(b) The reorganization plan establishing the Department of Public Health shall have, at a minimum, all functions, powers and duties of the Commission on Public Health, including supportive services provided to the Commission on Public Health by the Department of Human Services’ Management and Support Services Division.

(c) The Mayor may prepare and transmit to the Council a reorganization plan for the remaining functions of the Department of Human Services at the same time as the reorganization plan establishing the Department of Public Health is transmitted to the Council.

(d) The reorganization plan establishing the Department of Public Health shall become effective no later than October 1, 1994. (Mar. 13, 1992, D.C. Law 9-182, § 3, 39 DCR 8203.)

Legislative history of Law 9-182. — See note to § 6-131.

§ 6-133. Appointment of Director.

The Department of Public Health shall be under the supervision and direction of a Director who shall be appointed by the Mayor in accordance with subchapter XI of Chapter 6 of Title 1, and subject to the advice and consent of the Council, as provided in § 1-633.7. (Mar. 13, 1992, D.C. Law 9-182, § 4, 39 DCR 8203.)

Legislative history of Law 9-182. — See note to § 6-131.

§ 6-134. Establishment of Public Health Coordination Advisory Committee.

(a) There is established a Public Health Coordination Advisory Committee (“Committee”) which shall be responsible for advising the Director of the Department of Public Health, the Mayor and the Council on policy matters related to the effective and efficient coordination of the delivery of public health care services in the District of Columbia.

(b) The Committee shall include:

(1) The Director of the Department of Public Health who shall serve as the chairperson;

(2) The Commissioner of Mental Health Services or a designee;

- (3) The Commissioner of Social Services or a designee;
- (4) The Executive Director of the District of Columbia General Hospital or a designee;
- (5) The Executive Director of the Office on Aging or a designee;
- (6) The Director of the Department of Consumer and Regulatory Affairs or a designee;
- (7) The President of the Doctors Council of the District of Columbia, representing employees in Compensation Unit 19, or a designee; and
- (8) The following persons who shall be appointed by the Mayor:
 - (A) 1 licensed physician and 1 licensed dentist employed by a District health care facility;
 - (B) 2 licensed nurses employed by a District health care facility; and
 - (C) 2 consumers of health care services in the District.
- (c) The duties of the Committee shall include advising the Director of the Department of Public Health on the development, implementation and monitoring of a comprehensive plan to coordinate the delivery of District health care services provided by the public health clinics of the Department of Public Health and the District of Columbia General Hospital to provide a comprehensive continuum of efficient and quality health care services to District residents. (Mar. 13, 1992, D.C. Law 9-182, § 5, 39 DCR 8203.)

Legislative history of Law 9-182. — See note to § 6-131.

CHAPTER 2. VITAL RECORDS.

Sec.

- 6-201. Definitions.
- 6-202. Vital records system established.
- 6-203. Appointment and duties of Registrar.
- 6-204. General requirements.
- 6-205. Birth registration.
- 6-205.1. Social Security numbers.
- 6-206. Infants of unknown parentage.
- 6-207. Delayed filing and registration of birth.
- 6-208. Judicial procedure to establish facts of birth.
- 6-209. Adoption forms.
- 6-210. New certificates of birth.
- 6-211. Death registration.
- 6-212. Delayed filing and registration of death.
- 6-213. Reports of fetal deaths.
- 6-214. Final disposition of dead body or fetus.

Sec.

- 6-215. Marriage registration.
- 6-216. Divorce and annulment registration.
- 6-217. Amendment.
- 6-218. Reproduction.
- 6-219. Confidentiality.
- 6-220. Copies or data from records.
- 6-221. Fees for vital records and searches.
- 6-222. Persons required to keep records.
- 6-223. Persons required to furnish information.
- 6-224. Matching birth and death certificates.
- 6-225. Penalties.
- 6-226. Regulations.
- 6-227. Severability.
- 6-228. Effective date.

Revision of chapter. — D.C. Law 4-34 repealed former Chapter 2, containing §§ 6-201 to 6-204, and enacted present Chapter 2, containing §§ 6-201 to 6-228, in lieu thereof.

§ 6-201. Definitions.

Unless otherwise specified as used in this chapter, the term:

(1) "Court" means the Superior Court of the District of Columbia established by § 11-901.

(2) "Day" means calendar day.

(3) "Dead body" means a human body or such parts of such human body from the condition of which it may be reasonably concluded that death recently occurred.

(4) "District" means within the geographical boundaries of the District of Columbia.

(4A) "Expected death" means a death from a previously diagnosed illness with a prognosis of death in less than 6 months.

(5) "Fetal death" means death prior to the complete expulsion or extraction from its mother of a product of a human conception, irrespective of the duration of pregnancy. The death is indicated by the fact that after such expulsion or extraction the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles. The term "fetal death" does not include an induced termination of pregnancy.

(6) "File" means the presentation of a vital record for registration.

(7) "Final disposition" means the burial, interment, cremation, removal from the District, or other authorized disposition of a dead body or fetus.

(8) "Institution" means any establishment, public or private, which provides inpatient medical, surgical, or diagnostic care or treatment, or nursing, custodial, or domiciliary care, or to which persons are committed by law.

(9) "Live birth" means the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of

pregnancy, which, after such expulsion or extraction, breathes, or shows any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached.

(10) "Person" means an individual, a trust, an estate, a partnership, a corporation (including associations, joint stock companies, and insurance companies), the District government, or an agency or instrumentality of the District government.

(11) "Physician" means an individual authorized to practice medicine or osteopathy in the District.

(12) "Registrar" means the person appointed by the Director of the Department of Human Services to administer the system of vital records for the District government under this chapter.

(13) "Registration" or "register" means the acceptance of vital records by the Registrar and the incorporation of vital records provided for in this chapter into his or her official records.

(14) "System of vital records" means the registration, collection, preservation, amendment, and certification of vital records, the collection of other reports required by this chapter, and activities related thereto.

(15) "Vital records" means certificates or reports of birth, death, marriage, divorce, annulment, and data related thereto which is permitted to be gathered under this chapter.

(16) "Vital statistics" means the data derived from certificates and reports of birth, death, fetal death, marriage, divorce, annulment, and related reports. (Oct. 8, 1981, D.C. Law 4-34, § 2, 28 DCR 3271; Mar. 13, 1992, D.C. Law 9-180, § 2(a), 39 DCR 8078.)

Effect of amendments. — D.C. Law 9-180 added (4A).

Legislative history of Law 4-34. — Law 4-34, the "Vital Records Act of 1981," was introduced in Council and assigned Bill No. 4-161, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 16, 1981, and June 30, 1981, respectively. Signed by the Mayor on July 20, 1981, it was assigned Act No. 4-58 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-180. — Law 9-180, the "Medical Cause of Death Privacy and

Expected Death at Home Vital Records and Kenilworth-Parkside Equitable Water and Sewer Service Relief Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-275, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on July 7, 1992, and October 6, 1992, respectively. Signed by the Mayor on October 23, 1992, it was assigned Act No. 9-299 and transmitted to both Houses of Congress for its review. D.C. Law 9-180 became effective on March 13, 1993.

§ 6-202. Vital records system established.

The Mayor shall establish a vital records system consistent with this chapter for the reporting, maintenance, issuance, and confidentiality of vital records. (Oct. 8, 1981, D.C. Law 4-34, § 3, 28 DCR 3271.)

Section references. — This section is referred to in § 6-228.

Legislative history of Law 4-34. — See note to § 6-201.

§ 6-203. Appointment and duties of Registrar.

The Director of the Department of Human Services shall appoint the Registrar who shall:

- (1) Be in charge of administering the vital records system and be the custodian of its records; and
- (2) Develop and distribute forms or other means for transmitting data to carry out the reporting and registration purposes of this chapter. (Oct. 8, 1981, D.C. Law 4-34, § 4, 28 DCR 3271.)

Section references. — This section is referred to in § 6-228.

Legislative history of Law 4-34. — See note to § 6-201.

§ 6-204. General requirements.

- (a) Each certificate, record, report, and other document required by this chapter shall be on a form or in a format prescribed by the Registrar.
- (b) Each vital record shall contain the date of registration.
- (c) Information required in a certificate or report may be filed and registered by photographic, electronic, or other means as prescribed by the Registrar.
- (d) Each form may include each item recommended by the federal agency responsible for national vital statistics. (Oct. 8, 1981, D.C. Law 4-34, § 5, 28 DCR 3271.)

Legislative history of Law 4-34. — See note to § 6-201.

§ 6-205. Birth registration.

(a) A certificate of birth for each live birth which occurs in the District shall be filed as directed by the Registrar, within 5 days after such birth, and shall be registered if it has been completed and filed in accordance with this chapter.

(b) When a birth occurs in or en route to an institution the person in charge of the institution or his or her designee shall collect the personal data, prepare the certificate, secure the signatures required, and file the certificate. The physician or other person in attendance at or immediately after the birth shall provide the medical information required in the certificate and certify to the facts of birth within 72 hours after the birth. If the physician, or other person in attendance at or immediately after the birth, does not certify to the facts of birth within the 72-hour period, the person in charge of the institution or his or her designee shall certify to the facts of birth and complete the certificate.

(c) When a birth occurs outside an institution, the certificate shall be prepared and filed by one of the following persons in the indicated order of priority:

- (1) The physician in attendance at the time of birth or in attendance immediately after the birth;
- (2) Any other person in attendance at the time of birth or in attendance immediately after the birth; or
- (3) The father, the mother, or, in the absence of the father and the inability of the mother, the person in charge of the premises where the birth occurred.

(d) When a birth occurs on a moving conveyance within the United States and the child is first removed from the conveyance in the District, the birth shall be registered in the District, and the place where it is first removed shall be considered the place of birth. When a birth occurs on a moving conveyance while in international waters, air space, in a foreign country or its air space, and the child is first removed from the conveyance in the District, the birth shall be registered in the District, but the certificate shall show the actual place of birth insofar as can be determined.

(e) For the purposes of preparation and filing a birth certificate the following rules apply:

(1) The certificate shall include the name of the mother of the child;

(2) If the mother was married at the time of either conception or birth, or between conception and birth, the name of the husband shall be entered on the certificate as the father of the child, unless parentage has been determined otherwise by the Court pursuant to § 16-909;

(3) If the mother was not married at the time of either conception or birth or between conception and birth, the name of the father shall only be entered on the certificate with the written consent of the mother and the person to be named as the father, in which case, upon written request to the Registrar by both parents, the surname of the child shall be entered on the certificate as that of the father;

(4) If the father is not named on the certificate of birth, no other information about the father shall be entered on the certificate; and

(5) In all other cases, the surname of the child shall be the legal surname of the mother at the time of birth.

(f) Either of the parents of the child, or other informant, shall confirm with his or her signature the accuracy of the personal data entered on the certificate before the certificate is filed. (Oct. 8, 1981, D.C. Law 4-34, § 6, 28 DCR 3271.)

Section references. — This section is referred to in §§ 6-207 and 6-213.

Cited in *Murphy v. McCloud*, App. D.C., 650 A.2d 202 (1994).

Legislative history of Law 4-34. — See note to § 6-201.

§ 6-205.1. Social Security numbers.

(a) A person required to prepare and file a certificate of birth shall provide on a form separate from the certificate of birth, the Social Security account number or numbers of each parent, if the parent has more than 1 Social Security account number. The Social Security account number shall not be recorded on the certificate of birth.

(b) The Social Security account number shall be collected by the Register of Vital Records and made available only to the Department of Human Services Office of Paternity and Child Support Enforcement, and the Child Support Section of the Civil Division of the Office of the Corporation Counsel for the enforcement of child support orders. A Social Security account number shall not be available for any other purpose. (Oct. 8, 1981, D.C. Law 4-34, § 6a, as added July 25, 1990, D.C. Law 8-150, § 5, 37 DCR 3720.)

Legislative history of Law 8-150. — Law 8-150, the “Child Support Guideline Amendment Act of 1990,” was introduced in Council and assigned Bill No. 8-461, which was referred to the Committee on the Judiciary. The Bill was

adopted on first and second readings on May 1, 1990, and May 15, 1990, respectively. Signed by the Mayor on May 30, 1990, it was assigned Act No. 8-208 and transmitted to both Houses of Congress for its review.

§ 6-206. Infants of unknown parentage.

(a) A person who assumes legal custody of a live born infant of unknown parentage shall report the following information to the Registrar, within 5 days after taking custody:

- (1) Date and place child was found;
- (2) Sex, race, and approximate birth date of child;
- (3) Name and address of the person or institution with whom the child has been placed for care;
- (4) Name given to the child by the custodian of the child; and
- (5) Any other data required by the Registrar.

(b) The place where the child was found shall be entered as the place of birth.

(c) A report registered under this section shall constitute the certificate of birth for the child.

(d) If the child is identified and a certificate of birth is obtained, the report registered under this section shall be sealed and placed in a special file and shall not be subject to inspection except upon order of the Court (or as provided by regulation). (Oct. 8, 1981, D.C. Law 4-34, § 7, 28 DCR 3271.)

Legislative history of Law 4-34. — See note to § 6-201.

§ 6-207. Delayed filing and registration of birth.

(a) A certificate of birth may be filed after the 5-day period specified in § 6-205 if the person or institution filing the certificate meets the filing and registration requirements imposed by this section. The Registrar shall prescribe by regulation evidentiary requirements to substantiate facts of birth for those certificates filed and registered after the 5-day period.

(b) A certificate of birth registered 1 year or more after the date of birth shall be marked “delayed” and show the date of the delayed registration on the face of the certificate.

(c) A written summary statement of the evidence submitted in support of the delayed registration shall be made by the Registrar on the certificate. Both the registrant and the Registrar shall sign the certificate and have the signatures notarized.

(d)(1) When an applicant does not submit the minimum documentation required in the regulations for delayed registration or when the Registrar has reasonable cause to question the validity or adequacy of the applicant’s sworn statement or the documentary evidence, and if the deficiencies are not corrected, the Registrar shall not register the delayed certificate of birth. The Registrar shall state in writing to the applicant the reason for this action. Upon the Registrar’s refusal to register, the registrant shall have a cause of

action in the Court to establish the date and place of birth and the parentage of the person whose birth is to be registered. The Registrar shall give the registrant written notice of this right.

(2) The Registrar may by regulation provide for the dismissal of an application which is not actively pursued. (Oct. 8, 1981, D.C. Law 4-34, § 8, 28 DCR 3271.)

Section references. — This section is referred to in §§ 6-208 and 6-210.

Legislative history of Law 4-34. — See note to § 6-201.

§ 6-208. Judicial procedure to establish facts of birth.

(a) If a delayed certificate of birth is rejected under § 6-207, a complaint signed and sworn to by the petitioner may be filed with the Court for an order establishing a record of the date and place of the birth and the parentage of the person whose birth is to be registered. A complaint filed under this section shall be governed by the Rules of the Superior Court of the District of Columbia.

(b) Such petition shall allege:

(1) That the person for whom a delayed certificate of birth is sought was born in the District;

(2) That no certificate of birth of such person can be found in the District government vital records system;

(3) That despite diligent efforts by the petitioner, he or she was unable to obtain the evidence required by this chapter and regulations issued pursuant to this chapter;

(4) That the Registrar has refused to register a delayed certificate of birth; and

(5) Any other information needed to establish the facts of birth.

(c) The petition shall be accompanied by a statement of the Registrar made in accordance with § 6-207 and all documentary evidence which was submitted to the Registrar in support of such registration.

(d) The Court shall issue an order to establish a certificate of birth if the Court finds, that the person for whom a delayed certificate of birth is sought was born in the District. The Court shall make findings as to the place and date of birth, parentage, and such other findings as may be required. The order shall include the birth data to be registered, a description of the evidence presented, and the date of the Court's action.

(e) The Court shall forward a certified copy of such order to the Registrar not later than the 10th day of the month following the month during which it was entered. The certified copy of the order shall cause the Registrar to execute a certificate of birth. (Oct. 8, 1981, D.C. Law 4-34, § 9, 28 DCR 3271.)

Section references. — This section is referred to in § 6-210.

Legislative history of Law 4-34. — See note to § 6-201.

§ 6-209. Adoption forms.

(a) The Court shall cause to be prepared an adoption form for each adoption decreed by the Court. The form shall:

(1) State facts necessary to locate and identify the original certificate of birth of the adoptee;

(2) Provide only such information as is necessary to establish a new certificate of birth for the adoptee;

(3) Identify the adoption order; and

(4) Be certified by the Court.

(b) The petitioner for adoption or his or her attorney shall supply the information required by the Court to prepare an adoption form in format prescribed and furnished by the Registrar. The Department of Human Services or any person having knowledge of the facts shall supply the Court with any additional information necessary to complete the adoption form.

(c) The Court shall prepare an adoption form whenever an adoption decree is amended or invalidated. The adoption form shall identify the original adoption form and shall include any additional facts in the adoption decree necessary to properly amend the birth record.

(d) The Court shall forward to the Registrar adoption forms concerning decrees of adoption, invalidation of adoption, and amendments of decrees of adoption which were entered in the preceding month, together with such related reports as the Registrar may require no later than the final day of each calendar month.

(e) The Registrar shall forward any adoption form and certified copy of a Court decree concerning any invalidation of adoption or amendment of a decree of adoption for persons born outside the District that he or she receives to the Registrar in the state of the person's birth. If the birth occurred in a foreign country, the adoption form and decree shall be returned to the attorney or agency handling the adoption for submission to the appropriate federal agency. (Oct. 8, 1981, D.C. Law 4-34, § 10, 28 DCR 3271.)

Section references. — This section is referred to in § 6-210.

Cited in *In re Baby Boy C.*, 120 WLR 1309 (Super. Ct. 1992).

Legislative history of Law 4-34. — See note to § 6-201.

§ 6-210. New certificates of birth.

(a) The Registrar shall establish a new certificate of birth for a person born in the District, upon receipt of one of the following documents:

(1) An adoption form prepared according to § 6-209;

(2) An adoption form prepared and filed according to the laws of a state or foreign country;

(3) A certified copy of an order issued by the Court determining the parentage of such a person; or

(4) A written acknowledgement of parentage of the person, pursuant to § 16-2345 or § 30-320.

(a-1) The Registrar shall establish a new certificate of birth for an adoptee born outside of the United States, upon receipt of a request from the adopting parents, or the adoptee if 18 years of age or older, and receipt of one of the following documents:

(1) An adoption form prepared according to § 6-209; or

(2) An adoption decree and the original certificate of birth, or evidence as to the date and place of birth of the adoptee from sources determined by the Court to be reliable, prepared according to the laws of the country where the birth occurred.

(b) The Registrar shall not establish a new certificate of birth if so requested by the adoptive parents pursuant to § 16-314(a).

(c) The actual place and date of birth shall be shown on a new certificate of birth. The new certificate shall be substituted for the original certificate of birth in the files. The new certificate shall nowhere on its face show that parentage has been established by judicial process or by acknowledgement. The original certificate of birth and the evidence of adoption, parentage determination, or parentage acknowledgement shall not be subject to inspection; except, that:

(1) By the Registrar only for the purpose of properly administering the vital statistics program under this chapter; or

(2) Upon order of the Court.

(d) A certificate of birth shall be amended upon receipt of an adoption form concerning an amended decree of adoption. The Registrar shall issue regulations to govern amendment of certificates of birth.

(e) The Registrar shall restore the original certificate of birth to its place in the files upon receipt of the report or decree of invalidation of adoption. The new certificate and evidence shall not be subject to inspection except upon order of the Court or as provided by regulations implementing this chapter.

(f) If no certificate of birth is on file for the person for whom a new birth certificate is to be established under this section, and the date and place of birth have not been determined in the adoption or parentage proceedings, a delayed certificate of birth shall be filed with the Registrar under § 6-207 or § 6-208 before a new certificate of birth is established. The new birth certificate shall be prepared on the delayed birth certificate form.

(g) Each copy of the original certificate of birth shall be sealed from inspection when a new certificate of birth is established. (Oct. 8, 1981, D.C. Law 4-34, § 11, 28 DCR 3271; May 21, 1992, D.C. Law 9-101, § 3, 39 DCR 2146.)

Effect of amendments. — D.C. Law 9-101 inserted (a-1).

Legislative history of Law 4-34. — See note to § 6-201.

Legislative history of Law 9-101. — Law 9-101, the "Vital Records Adoptive Birth Registration Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-192,

which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on February 4, 1992, and March 3, 1992, respectively. Signed by the Mayor on March 23, 1992, it was assigned Act No. 9-173 and transmitted to both Houses of Congress for its review. D.C. Law 9-101 became effective on May 21, 1992.

§ 6-211. Death registration.

(a) The funeral director or person acting as such who first takes custody of the dead body shall file a certificate of death. He or she shall obtain the personal data from the next of kin or the best qualified person or source available and obtain the medical certificate required under this section.

(b) A certificate of death for each death which occurs in the District shall be filed as directed by the Registrar within 5 days after death and before final disposition. The certificate shall be registered if it has been completed and filed according to this chapter.

(c) If the place of death is unknown but the dead body is found in the District, the certificate of death shall be completed and filed in the District. The place where the body is found shall be shown as the place of death. If the date of death is unknown, it shall be determined by approximation.

(d) When death occurs on a moving conveyance in the United States and the body is first removed from the conveyance in the District, the death shall be registered in the District and the place where it is first removed shall be considered the place of death. When a death occurs on a moving conveyance while in international waters or air space, or in a foreign country or its air space and the body is first removed from the conveyance in the District, the death shall be registered in the District, but the certificate shall show the actual place of death insofar as can be determined.

(e) Within 48 hours after death, the physician in charge of a patient's care for the condition which resulted in death shall complete, sign, and return the medical certification portion of the death certificate to the funeral director, except when inquiry is required by the Office of the Chief Medical Examiner. In the absence of such physician or with his or her authorization, the certificate may be completed and signed by his or her associate physician, the chief medical officer of the institution in which death occurred, or the physician who performed an autopsy upon the decedent, if that individual has access to the medical history of the case, views the deceased at or after death, and death is due to natural causes.

(f) When an inquiry is conducted by the Office of the Chief Medical Examiner, the Medical Examiner shall determine the cause of death, and complete, sign, and return the medical certification portion of the death certificate to the funeral director within 48 hours after taking charge of the case.

(g) If the cause of death cannot be determined within 48 hours after death, the medical certification shall be completed as provided by regulation. The physician completing the medical certification or Medical Examiner shall give the funeral director or person acting as the funeral director, notice of the reason of the delay. Final disposition of the body shall not be made until authorized by the physician completing the medical certification or the Medical Examiner.

(h) When a death is presumed to have occurred within the District, but the body cannot be located, a death certificate shall be prepared by the Registrar upon receipt of an order of the Court pursuant to § 14-701. The Court order shall include a finding of facts necessary for completion of the death certificate. The death certificate shall be marked "presumptive", show on its face the date of registration, identify the Court, and state the date of the decree.

(i) Each death certificate shall contain a pronouncement of death section and a medical certification of cause of death section. For the purposes of this subsection, the pronouncement of death section shall include all facts required

to be reported in this section, except for those facts relating to the medical cause or causes of death reported pursuant to subsections (e) and (f) of this section.

(j) In the case of an expected death at a decedent's place of residence at the time of death, attended by a treating physician or a registered nurse working in general collaboration with the treating physician, the attending registered nurse may sign the pronouncement of death section of the death certificate promptly following death. (Oct. 8, 1981, D.C. Law 4-34, § 12, 28 DCR 3271; Mar. 13, 1992, D.C. Law 9-180, § 2(b), 39 DCR 8078.)

Section references. — This section is referred to in §§ 6-212, 6-214, and 6-220.

Effect of amendments. — D.C. Law 9-180 added (i) and (j).

Legislative history of Law 4-34. — See note to § 6-201.

Legislative history of Law 9-180. — See note to § 6-201.

§ 6-212. Delayed filing and registration of death.

(a) A delayed certificate of death may be filed in accordance with regulations issued by the Registrar, when a death occurring in the District has not been registered within the time period specified in § 6-211. Any delayed certificate shall be registered subject to such evidentiary requirements as the Registrar shall prescribe by regulation in order to substantiate the alleged facts of death.

(b) A certificate of death registered 1 year or more after the date of death shall be marked "delayed" and shall show on its face the date of the delayed registration. (Oct. 8, 1981, D.C. Law 4-34, § 13, 28 DCR 3271.)

Legislative history of Law 4-34. — See note to § 6-201.

§ 6-213. Reports of fetal deaths.

(a) Each fetal death of 20 completed weeks gestation or more, calculated from the date that the last normal menstrual period began to the date of delivery, or a weight of 500 grams or more, which occurs in the District shall be reported as directed by the Registrar within 5 days after occurrence. For purposes of preparing and filing a fetal death report the following rules apply:

(1) When such fetal death occurs in an institution, the person in charge of the institution or his or her designee shall prepare and file the report required by this section;

(2) When such fetal death occurs outside an institution, the physician in attendance at the delivery or immediately after delivery shall prepare and file the report required by this section;

(3) When a fetal death required to be reported under this section occurs without medical attendance at or immediately after the delivery, the Medical Examiner shall prepare and file the fetal death report;

(4) When such fetal death occurs on a moving conveyance and the fetus is first removed from the conveyance in the District, the fetal death shall be reported in the District. The place where the fetus was first removed from the conveyance shall be considered the place of fetal death;

(5) When a dead fetus is found in the District and the place of fetal death is unknown, the fetal death shall be reported in the District and the place where the dead fetus is found shall be considered the place of fetal death.

(b) The name of the mother and the father shall be entered on each fetal death report in accordance with the provisions of § 6-205.

(c) Each report required in this section is a statistical report to be used only for medical and health purposes and shall not be incorporated into the permanent official records of the system of vital records. A schedule for the disposition of these reports shall be provided for by regulation. (Oct. 8, 1981, D.C. Law 4-34, § 14, 28 DCR 3271.)

Legislative history of Law 4-34. — See note to § 6-201.

§ 6-214. Final disposition of dead body or fetus.

(a) The funeral director or person acting as such or person who first assumes custody of a dead body, before he or she may dispose of the body, must have: (1) Authorization for final disposition of the body from the next of kin; and (2) a death certificate. If the body is to be cremated, authorization for cremation must also be obtained from the Medical Examiner.

(b) Before final disposition of a dead fetus, regardless of the duration of pregnancy, the funeral director, the person in charge of the institution, or other person responsible for final disposition of the fetus, shall get authorization from the next of kin for final disposition.

(c) A dead body shall be removed from the place of death for the purpose of being prepared for final disposition only under the following conditions:

(1) Upon the consent of the medical examiner or the treating physician who certifies the cause of death; or

(2) In the case of an expected death at a decedent's place of residence, at the time of death upon the consent of a treating physician or a registered nurse working in general collaboration with the treating physician who signs the pronouncement of death section of the death certificate in accordance with § 6-211.

(d) Authorization for final disposition of a dead body or fetus brought into the District, issued by another state and accompanying the dead body or fetus, is sufficient authority for final disposition in the District.

(e) A sexton or person in charge of a place for interment or other disposition of dead bodies may not inter or allow interment or other disposition of a dead body or fetus unless it is accompanied by authorization for final disposition.

(f) Each person in charge of a place for final disposition shall include the date of disposition in the authorization and shall sign and return the authorization to the funeral director or person acting as the funeral director, within 10 days after the date of disposition. Where there is no person in charge of the place for final disposition, the funeral director or his or her designee shall endorse the authorization. At the close of each calendar month the funeral director or the person acting as the funeral director shall transmit to the Mayor all endorsed authorizations received during the month.

(g) Authorization for disinterment and reinterment is required before disinterment of a dead body or fetus. The authorization may be issued by the Registrar to a licensed funeral director or person acting as such, upon proper application. (Oct. 8, 1981, D.C. Law 4-34, § 15, 28 DCR 3271; Mar. 13, 1992, D.C. Law 9-180, § 2(c), 39 DCR 8078.)

Effect of amendments. — D.C. Law 9-180 rewrote (c).

Legislative history of Law 9-180. — See note to § 6-201.

Legislative history of Law 4-34. — See note to § 6-201.

§ 6-215. Marriage registration.

(a) Each completed application and completed license for each marriage performed in the District on or after the effective date of this chapter shall be filed with the Registrar and shall be registered if it has been completed and filed in accordance with this chapter.

(b) The Court shall complete and forward to the Registrar on or before the 30th day of each calendar month the completed applications and completed licenses returned to the Court during the preceding calendar month.

(c) A marriage record not filed within the required time may be registered according to regulations issued by the Registrar. (Oct. 8, 1981, D.C. Law 4-34, § 16, 28 DCR 3271.)

Legislative history of Law 4-34. — See note to § 6-201.

§ 6-216. Divorce and annulment registration.

(a) A record of each divorce and annulment granted by the Court shall be filed with the Registrar and shall be registered if it has been completed and filed in accordance with this section. The record shall be prepared by the plaintiff or his or her legal representative and shall be presented to the Clerk of the Court with the complaint for divorce or annulment in accordance with the Rules of the Superior Court of the District of Columbia.

(b) The Court shall complete and forward to the Registrar on or before the 20th day of each calendar month the records of each divorce or annulment decree granted during the preceding calendar month. (Oct. 8, 1981, D.C. Law 4-34, § 17, 28 DCR 3271.)

Legislative history of Law 4-34. — See note to § 6-201.

§ 6-217. Amendment.

(a) The Registrar shall issue regulations governing amendment of vital records, which shall protect the integrity and accuracy of the vital records. A certificate, or report registered under this chapter may be amended only in accordance with this chapter and regulations issued under this chapter.

(b) Except as otherwise provided in this section, a certificate or report that is amended under this section shall be marked “amended”. The date of

amendment and a summary description of the evidence submitted in support of the amendment shall be endorsed on or made a part of the records. The Registrar shall issue regulations which prescribe the conditions under which additions or minor corrections may be made to certificates, or reports, within 1 year after the date of the event without the certificate or record being marked "amended".

(c) Upon receipt of a certified copy of an order of a court of competent jurisdiction changing the name of a person born in the District and upon request of such person, his or her guardian or legal representative, or, in the case of a minor, his or her parents, the Registrar shall amend the certificate of birth to show the new name.

(d) Upon receipt of a certified copy of an order of the Court indicating that the sex of an individual born in the District has changed by surgical procedure and that such individual's name has been changed, the certificate of birth of such individual shall be amended as prescribed by regulation.

(e) The Registrar shall not amend the vital record if: (1) An applicant does not submit the minimum documentation required in the regulations for amending a vital record; or (2) when the Registrar has reasonable cause to question the validity or adequacy of the applicant's sworn statements or the documentary evidence, and the deficiencies are not corrected. The Registrar shall state in writing the reason for this action. Upon the Registrar's refusal to amend the vital record, the applicant shall have a cause of action in the Court to amend the vital record. The Registrar shall give the applicant written notice of this right. (Oct. 8, 1981, D.C. Law 4-34, § 18, 28 DCR 3271; Mar. 14, 1985, D.C. Law 5-159, § 18, 32 DCR 30.)

Legislative history of Law 4-34. — See note to § 6-201.

Legislative history of Law 5-159. — Law 5-159, the "End of Session Technical Amendments Act of 1984," was introduced in Council and assigned Bill No. 5-540, which was referred to the Committee of the Whole. The Bill was

adopted on first and second readings on November 20, 1984, and December 4, 1984, respectively. Signed by the Mayor on December 10, 1984, it was assigned Act No. 5-224 and transmitted to both Houses of Congress for its review.

§ 6-218. Reproduction.

The Registrar may prepare typewritten, photographic, electronic, or other reproductions of certificates or reports in order to preserve the vital records. Such reproductions shall be accepted as the original records when certified by the Registrar. The documents from which permanent reproductions have been made and verified may be disposed of as provided by regulation. (Oct. 8, 1981, D.C. Law 4-34, § 19, 28 DCR 3271.)

Legislative history of Law 4-34. — See note to § 6-201.

§ 6-219. Confidentiality.

(a) No person may permit inspection of, disclose information contained in, or copy or issue a copy of any part of a vital record except as authorized by this

chapter, regulations issued under and consistent with this chapter, or by order of the Court. Regulations issued under this section shall provide for adequate standards of security and confidentiality of vital records.

(b) The Registrar may authorize the disclosure of information contained in vital records for research purposes, and shall issue regulations governing such use of the records.

(c) Except for certificates, reports, or other documents which are sealed or confidential by statute, 100 years after the date of birth, and 50 years after the date of death, marriage, divorce or annulment, records in the custody of the Registrar become public records. The Registrar shall issue regulations to provide for continued safekeeping of these records and to allow information in these records to be made available to the public. (Oct. 8, 1981, D.C. Law 4-34, § 20, 28 DCR 3271.)

Section references. — This section is referred to in § 6-220.

Legislative history of Law 4-34. — See note to § 6-201.

§ 6-220. Copies or data from records.

(a) Upon receipt of a written application the Registrar shall issue a certified copy of all or part of a vital record in his or her custody to any applicant having a direct and tangible interest in the vital record. Each copy issued shall show the date of registration. A copy issued from records marked “delayed” or “amended” shall show the date of registration and the effective date. The documentary evidence used to establish a delayed certificate shall be shown on each copy issued. For purposes of this subsection the following rules apply:

(1) The registrant, a member of his or her immediate family, his or her guardian, or their respective legal representatives shall be considered to have a direct and tangible interest. Others may demonstrate a direct and tangible interest when information is needed for determination or protection of a personal or property right;

(2) The term “legal representative” shall include an attorney, physician, funeral director, or other authorized agent acting in behalf of the registrant or his or her family;

(3) The natural parents of adopted children, when neither has custody, and commercial firms or agencies requesting listings of names and addresses shall not be considered to have a direct and tangible interest;

(4) A certified copy provided under this subsection shall be restricted to the information contained in the pronouncement of death section and shall not include the facts of the medical cause or causes of death reported under § 6-211(e) and (f) unless a qualified applicant having a direct and tangible interest in the death certificate makes a specific request for a certified copy of the medical certification of cause of death section, in which case the Registrar shall provide a separate certified copy of the medical certification of the cause of death section.

(b) A certified copy of all or part of a vital record, issued in accordance with subsection (a) of this section, shall be considered for all purposes the same as the original and shall be prima facie evidence of the facts stated in the record.

The evidentiary value of a certificate or record filed more than 1 year after the event or a record which has been amended shall be determined by the judicial or administrative body or official before whom the certificate is offered as evidence.

(c) The Registrar may supply copies or data from the system of vital records to the federal agency responsible for national vital statistics, as that agency may require for national statistics purposes, if the federal agency shares in the cost of collecting, processing, and transmitting such data. The data shall not be used for other than statistical purposes by the federal agency without authorization from the Registrar.

(d) Federal, state, District, and other public or private agencies may upon request be furnished copies or data from the system of vital records for statistical or administrative purposes upon such terms or conditions as may be prescribed by regulation. The copies or data shall not be used for purposes other than those for which they were requested.

(e) The Registrar may, by agreement, transmit copies of records and other reports required by this chapter to offices of vital records outside the District, when such records or other reports relate to residents of those jurisdictions or persons born in those jurisdictions. The agreement shall require that the copies be used for statistical and administrative purposes only and provide for the retention and disposition of such copies. Copies received by the Registrar from offices of vital records in the states shall be handled in the same manner as prescribed in this section.

(f) No person shall prepare or issue any certificate which purports to be an original, certified copy, or copy of a vital record except as authorized in this chapter or regulations issued under this chapter.

(g) Nothing in this chapter shall be construed to prevent the Registrar from providing:

(1) Information or data from the pronouncement of death and the medical certification of cause of death sections of the death certificate in accordance with §§ 6-219(b) and 6-220(c), (d), and (e); or

(2) A certified copy of the complete death certificate, including the pronouncement of death and the medical certification of cause of death sections, to an insurer, who has a direct and tangible interest in the death certificate, and who has issued a policy to or on behalf of the deceased which provides financial or monetary benefits payable upon the death of the deceased. (Oct. 8, 1981, D.C. Law 4-34, § 21, 28 DCR 3271; Mar. 13, 1992, D.C. Law 9-180, § 2(d), (e), 39 DCR 8078.)

Effect of amendments. — D.C. Law 9-180 added (a)(4) and (g).

Legislative history of Law 9-180. — See note to § 6-201.

Legislative history of Law 4-34. — See note to § 6-201.

§ 6-221. Fees for vital records and searches.

(a) The Mayor shall issue regulations that prescribe the fee to be paid for:

(1) An amendment or correction to a vital record that is not the fault of the Mayor or a District government agency;

- (2) A certified copy of a certificate or record;
- (3) A search of a file or record if no copy is made;
- (4) A copy or information provided for research, statistical, or administrative purposes;
- (5) The processing of adoptions; or
- (6) Issuance of a new certificate of birth.

(b) The fee collected shall be deposited into the General Fund of the District government. (Oct. 8, 1981, D.C. Law 4-34, § 22, 28 DCR 3271; Sept. 26, 1990, D.C. Law 8-168, § 2, 37 DCR 4833.)

Legislative history of Law 4-34. — See note to § 6-201.

Legislative history of Law 8-168. — Law 8-168, the “Vital Records Act of 1981 Amendment Act of 1990,” was introduced in Council and assigned Bill No. 8-450, which was referred

to the Committee on Human Services. The Bill was adopted on first and second readings on June 12, 1990, and June 26, 1990, respectively. Signed by the Mayor on July 12, 1990, it was assigned Act No. 8-233 and transmitted to both Houses of Congress for its review.

§ 6-222. Persons required to keep records.

(a) A person in charge of an institution shall keep a record of personal data concerning each person admitted or confined to their institution. This record shall only include such information as required under this chapter for completion of certificates of birth and death and the reports of fetal death. The person being admitted or confined shall provide the information at the time of admission. If that person is unable to provide the necessary information, a relative or other person familiar with the pertinent facts shall supply the information. The record shall include the name and address of the person providing the information.

(b) When a dead body or dead fetus is released or disposed of by an institution, the person in charge of the institution shall keep a record showing the name of the decedent, date of death, name and address of the person to whom the body or fetus is released, and the date of removal from the institution. If final disposition is made by the institution, the date, place, and manner of disposition shall also be recorded.

(c) A funeral director, embalmer, sexton, or other person who removes from the place of death, transports, or makes final disposition of a dead body or fetus, shall keep a record that identifies the body, and includes information pertaining to his or her receipt, removal, delivery, burial, or cremation of such body as may be required by regulations. This requirement supplements any other filing or reporting requirement imposed by this chapter or regulations.

(d) Records maintained under this section shall be retained for not less than 5 years and shall be made available for inspection by the Registrar according to regulation. (Oct. 8, 1981, D.C. Law 4-34, § 23, 28 DCR 3271.)

Legislative history of Law 4-34. — See note to § 6-201.

§ 6-223. Persons required to furnish information.

(a) A person with information needed to complete a certificate or report required under this chapter regarding any birth, death, fetal death, marriage, divorce, or annulment shall give such information to the Registrar upon request.

(b) Not later than the 10th day of the month following the month of occurrence, the administrator of each institution shall send to the vital records section a list showing each birth and death occurring in that institution during the preceding month.

(c) Not later than the 10th day of the month following the month of occurrence, each funeral director shall send to the Registrar a list showing each dead body embalmed or otherwise prepared for final disposition or finally disposed of by the funeral director during the preceding month. (Oct. 8, 1981, D.C. Law 4-34, § 24, 28 DCR 3271.)

Legislative history of Law 4-34. — See note to § 6-201.

§ 6-224. Matching birth and death certificates.

The Registrar is authorized to match birth and death certificates in accordance with written regulations issued by the Mayor to prove beyond a reasonable doubt the fact of death, and to post the facts of death to the appropriate birth certificate. Copies issued from birth certificates marked deceased shall be similarly marked. (Oct. 8, 1981, D.C. Law 4-34, § 25, 28 DCR 3271.)

Legislative history of Law 4-34. — See note to § 6-201.

§ 6-225. Penalties.

A fine of not more than \$200 or imprisonment of not more than 90 days, or both, shall be imposed on:

(1) Any person who willfully and knowingly violates any of the provisions of this chapter or refuses to perform any of the duties imposed upon him or her by this chapter or regulations issued under this chapter; or

(2) Any person who willfully or negligently makes a false certification in any document required by this chapter. (Oct. 8, 1981, D.C. Law 4-34, § 26, 28 DCR 3271.)

Legislative history of Law 4-34. — See note to § 6-201.

§ 6-226. Regulations.

The Registrar may issue regulations as necessary to carry out the purposes of this chapter. The regulations shall be issued according to subchapter I of Chapter 15 of Title 1. (Oct. 8, 1981, D.C. Law 4-34, § 27, 28 DCR 3271.)

Section references. — This section is referred to in § 6-228.

Legislative history of Law 4-34. — See note to § 6-201.

§ 6-227. Severability.

If any provision of this chapter or its application to a particular person or circumstance is held invalid, such invalidity does not affect other provisions or applications. (Oct. 8, 1981, D.C. Law 4-34, § 28, 28 DCR 3271.)

Legislative history of Law 4-34. — See note to § 6-201.

§ 6-228. Effective date.

(a) Sections 6-202, 6-203, and 6-226 (including the authority to issue regulations to implement the entire chapter) shall take effect after a 30-day period of Congressional review following approval by the Mayor (or in the event of veto by the Mayor, action by the Council of the District of Columbia to override the veto) as provided in § 1-233(c)(1).

(b) All other sections of this chapter shall take effect 60 days after the date provided in subsection (a) of this section. (Oct. 8, 1981, D.C. Law 4-34, § 31, 28 DCR 3271.)

Legislative history of Law 4-34. — See note to § 6-201.

CHAPTER 3. PREVENTION OF BLINDNESS IN INFANTS.

Subchapter I. General Provisions.

Sec.

- 6-301. Prophylactic solution to be administered.
 6-302. Report of eye inflammation; treatment.
 6-303. Treatment by other than registered physician.
 6-304. Penalty.

Subchapter II. Newborn Screening.

- 6-311. Purpose.
 6-312. Definitions.
 6-313. Neonatal testing for metabolic disorders.

Sec.

- 6-314. Principles governing newborn screening.
 6-315. Committee on Metabolic Disorders — Composition; term of office; compensation; vacancies; chairperson; meetings.
 6-316. Same — Duties.
 6-317. Same — Annual report to Mayor and Council.
 6-318. Assumption of costs by District government.
 6-319. Appropriation.
 6-320. Effective date.

*Subchapter I. General Provisions.***§ 6-301. Prophylactic solution to be administered.**

The Mayor may, upon the advice of the Commissioner of Public Health and pursuant to subchapter I of Chapter 15 of Title 1, issue rules to prevent and monitor the occurrence of ophthalmia in newborns. Unless the Mayor provides otherwise, each physician or nurse-midwife who delivers or otherwise assumes the initial care of a newborn shall immediately upon that delivery or assumption of care administer to each eye of the newborn a 1% solution of silver nitrate, an ophthalmic ointment containing either 1% tetracycline or 0.5% erythromycin, or another prophylactic approved by the Mayor. (Apr. 27, 1937, 50 Stat. 120, ch. 144, § 1; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; 1973 Ed., § 6-201; Feb. 21, 1986, D.C. Law 6-83, § 4(a), 32 DCR 7276.)

Legislative history of Law 6-83. — Law 6-83, the "Preventive Health Services Amendments Act of 1985," was introduced in Council and assigned Bill No. 6-99, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on November 5, 1985, and November 19, 1985,

respectively. Signed by the Mayor on November 27, 1985, it was assigned Act No. 6-108 and transmitted to both Houses of Congress for its review.

Office of Director of Public Health abolished. — See note to § 6-101.

§ 6-302. Report of eye inflammation; treatment.

Whenever a physician or nurse-midwife discovers that a newborn in his or her care has inflammation of the eye(s) with suppuration, he or she shall report these symptoms to the Commissioner of Public Health within 6 hours of their discovery. Upon receipt of such communication the Commissioner of Public Health, unless he finds such report to be incorrect, shall issue an order directing the parents of such child (or other person charged with its care) either to: (1) Place such child in the care of a registered physician; or (2) submit immediately satisfactory proof of inability to pay for such medical service. If the Director of the Department of Human Services finds that the parents or such other person are unable to pay for such medical treatment, he shall order the parents (or such other person) to place the child in a hospital to be

designated by the Department of Human Services and at the expense of said Department. (Apr. 27, 1937, 50 Stat. 120, ch. 144, § 2; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; 1973 Ed., § 6-202; Feb. 21, 1986, D.C. Law 6-83, § 4(b), 32 DCR 7276.)

Legislative history of Law 6-83. — See note to § 6-301.

Health Department abolished. — See note to § 6-116.

Office of Director of Public Health abolished. — See note to § 6-101.

§ 6-303. Treatment by other than registered physician.

No person other than a registered physician shall treat any case of inflammation of the eyes, attended by a discharge therefrom, of a newborn child for any period longer than may be necessary to obtain the services of a registered physician. (Apr. 27, 1937, 50 Stat. 120, ch. 144, § 3; 1973 Ed., § 6-203.)

§ 6-304. Penalty.

Any person who willfully violates this subchapter or any rule, regulation, or order issued pursuant to this subchapter shall be guilty of a misdemeanor and, upon conviction, subject to a fine not exceeding \$1,000. Prosecution shall be in the Superior Court of the District of Columbia by information signed by the Corporation Counsel. (Apr. 27, 1937, 50 Stat. 120, ch. 144, § 4; 1973 Ed., § 6-204; Feb. 21, 1986, D.C. Law 6-83, § 4(c), 32 DCR 7276.)

Legislative history of Law 6-83. — See note to § 6-301.

Subchapter II. Newborn Screening.

§ 6-311. Purpose.

It is the purpose of this legislation to provide for the early identification of certain metabolic disorders in newborns in the District of Columbia so that referral and treatment, where appropriate, may be provided. (Apr. 29, 1980, D.C. Law 3-65, § 2, 27 DCR 1087.)

Legislative history of Law 3-65. — Law 3-65, the "District of Columbia Newborn Screening Requirement Act of 1979," was introduced in Council and assigned Bill No. 3-126, which was referred to the Committee on Human Resources. The Bill was adopted on first

and second readings on January 22, 1980 and February 5, 1980, respectively. Signed by the Mayor on March 4, 1980, it was assigned Act No. 3-163 and transmitted to both Houses of Congress for its review.

§ 6-312. Definitions.

Unless otherwise specified the following definitions apply:

(1) The term "metabolic disorder" means a disorder which results in a defect in the function of a specific enzyme or protein.

(2) The term "hypothyroidism" means those clinical conditions which result from abnormally low circulating levels of thyroid hormone.

(3) The term "newborn" means any infant born in the District who is under 4 weeks of age.

(4) The term "phenylketonuria," hereinafter referred to as "PKU," means the metabolic disease of the newborn in which metabolites of phenylalanine appear in urine.

(5) The term "homocystinuria" means a condition resulting from one of several genetically determined errors of methionine metabolism.

(6) The term "galactosemia" means a condition involving the inability to convert galactose to glucose.

(7) The term "maple syrup urine disease" means a condition resulting from the impairment of branched chain alpha-ketoacid dehydrogenase.

(8) The term "sickle hemoglobinopathy" means a condition in which a mutation in the hemoglobin results in abnormally shaped red blood cells that obstruct normal circulation and cause inadequate oxygenation of the body's tissues and vital organs. The term "sickle hemoglobinopathy" includes sickle cell anemia (homozygous sickle cell disease), sickle cell hemoglobin C disease, and sickle cell beta thalassemia.

(9) The terms "hospital" and "maternity center" mean those terms as they are defined in § 32-1301(a)(1) and (2). (Apr. 29, 1980, D.C. Law 3-65, § 3, 27 DCR 1087; July 25, 1985, D.C. Law 6-13, § 2(a), 32 DCR 3235.)

Legislative history of Law 3-65. — See note to § 6-311.

Legislative history of Law 6-13. — Law 6-13, the "District of Columbia Newborn Screening Requirement Act of 1979 Amendments Act of 1985," was introduced in Council and assigned Bill No. 6-46, which was referred

to the Committee on Human Services. The Bill was adopted on first and second readings on April 30, 1985, and May 14, 1985, respectively. Signed by the Mayor on May 30, 1985, it was assigned Act No. 6-27 and transmitted to both House of Congress for its review.

§ 6-313. Neonatal testing for metabolic disorders.

(a) Each hospital and maternity center in the District of Columbia shall make available to every newborn delivered or cared for at that hospital or maternity center blood tests to screen for galactosemia, homocystinuria, hypothyroidism, maple syrup urine disease, PKU, and sickle hemoglobinopathy. Each hospital and maternity center shall inform the parent(s) of the availability of these tests and shall, unless parental consent is withheld under § 6-314(3) or an identical test has already been performed, take appropriate blood samples for analysis by a laboratory designated pursuant to subsection (b) of this section. The Mayor may, upon the advice of the Committee on Metabolic Disorders, issue rules pursuant to subchapter I of Chapter 15 of Title 1, requiring that hospitals and maternity centers make screening tests available for additional metabolic disorders.

(b) Each test shall be forwarded to a laboratory designated by the Mayor. A designated laboratory must be one which is currently certified by the College of American Pathologists and regularly participates in the appropriate quality control program for such testing by the College or is currently certified by the United States Center for Disease Control and regularly participates in the

appropriate quality control program for such testing by the Center or has a federal license under the Clinical Laboratories Improvement Act of 1967 (42 U.S.C. § 263a), which permits the laboratory to solicit and accept in interstate commerce human specimens for the purpose of performing clinical laboratory examinations, for the purpose of detecting metabolic disorders.

(c) All test results shall be forwarded to the hospital or maternity center where the blood sample was taken. In addition, all positive test results shall be forwarded to the parent(s) and a physician designated by the District of Columbia government. This physician shall assist the parent(s) and the mother's physician (if she has one) in securing follow-up testing and treatment when appropriate. (Apr. 29, 1980, D.C. Law 3-65, § 4, 27 DCR 1087; July 25, 1985, D.C. Law 6-13, § 2(b), 32 DCR 3235.)

Section references. — This section is referred to in § 6-316.

Legislative history of Law 3-65. — See note to § 6-311.

Legislative history of Law 6-13. — See note to § 6-312.

Delegation of authority pursuant to Law 6-13. — See Mayor's Order 86-36, March 3, 1986.

§ 6-314. Principles governing newborn screening.

The Mayor shall insure that:

(1) Carriers of metabolic disorders should not be stigmatized and should not be discriminated against by any person within the District of Columbia;

(2) District of Columbia policy regarding metabolic disorders should be made with full public knowledge, in light of expert opinion, and should be periodically reviewed to consider changing medical knowledge and ensure full public protection;

(3) Participation of persons in metabolic disorder programs in the District of Columbia should be wholly voluntary, and that all information obtained from persons involved in metabolic disorder programs in the District of Columbia should be held strictly confidential, except as provided for in subparagraph (D) of this paragraph; and that in carrying out the mandate of this paragraph the Mayor shall further insure that:

(A) No test be performed on any newborn over the objections of his or her parent and that no test be performed unless such parent is fully informed of the purpose of testing for metabolic disorders, and is given a reasonable opportunity to object to such testing;

(B) No program requires mandatory participation, or restriction of childbearing, or be a prerequisite to eligibility for, or receipt of, any other service or assistance from or to participation in any other program;

(C) All participants in programs on metabolic disorders be protected from undue physical or mental harm, be informed of the nature of risks involved in participation in such a program or project, be informed of the nature and cost of available therapies or maintenance programs for those affected by metabolic disorders, and be informed of the possible benefits and risks of such therapies and programs; and

(D) Except for statistical data compiled without reference to the identity of any individual, all information obtained from any individual or from

specimens from any newborn shall be held confidential and be considered a confidential medical record except for such information as the parent consents to be released. The parent must be informed of the scope of the information requested to be released and the purpose for releasing such information, prior to the release of any confidential information. (Apr. 29, 1980, D.C. Law 3-65, § 5, 27 DCR 1087.)

Section references. — This section is referred to in § 6-313.

Legislative history of Law 3-65. — See note to § 6-311.

§ 6-315. Committee on Metabolic Disorders — Composition; term of office; compensation; vacancies; chairperson; meetings.

(a) The Committee on Metabolic Disorders (hereinafter referred to as the “Committee”), shall be composed of 9 members. The members shall be appointed by the Mayor. Each member shall serve a term of 3 years or until his or her successor is appointed and qualified, except that in the initial appointments 3 members shall serve for 1 year, 3 members for 2 years and 3 members for 3 years. No member shall be appointed to more than 3 consecutive 3-year terms. The members of the Committee shall serve without compensation.

(b) Four members of the Committee shall be consumer members. A consumer is defined as a person who is not a health professional, nor involved in the administration or ownership of any health care institution or health insurance organization, nor the spouse of a health professional, administrator, or owner. Two of the consumer members shall be appointed from a list of 5 names submitted to the Mayor by the District of Columbia Association for Retarded Citizens, Inc. Five of the members of the Committee shall be nonconsumers. Four of the nonconsumer members shall be licensed physicians knowledgeable in the diagnosis and treatment of metabolic disorders. At least 1 of the physicians shall be either a geneticist or an endocrinologist. The Director of the Department of Human Services, or his or her designate, shall serve as an ex officio nonvoting member of the Committee.

(c) When a vacancy on the Committee occurs for any reason other than the normal expiration of a term of office, a member shall be promptly appointed, to complete the unexpired term of the resigning member. The replacement member shall be selected in the same manner as outlined in subsection (b) of this section.

(d) The Mayor shall appoint a Chairperson from among the members of the Committee to serve from the time of the Committee formation until December 31st of the year of the formation of the Committee. Thereafter the Mayor, each year, shall appoint a Chairperson to serve a 1-year term to run from January 1st to December 31st of each year.

(e) The full Committee shall meet at least twice each year. Business may be conducted if a majority of the members are present. (Apr. 29, 1980, D.C. Law 3-65, § 6, 27 DCR 1087.)

Legislative history of Law 3-65. — See note to § 6-311.

References in text. — The Department of Human Resources was replaced by the Depart-

ment of Human Services pursuant to Reorganization Plan No. 2 of 1979, dated February 21, 1980.

§ 6-316. Same — Duties.

The Committee shall:

(1) Gather and disseminate information to further the public's understanding of metabolic disorders;

(2) Consult the public, especially committees and groups of persons particularly affected by metabolic disorder programs;

(3) Make available to the public information on the operation of all programs on metabolic disorders within the District of Columbia, except for confidential information;

(4) Reevaluate on a continuing basis the need for and efficacy of newborn screening tests for galactosemia, homocystinuria, hypothyroidism, maple syrup urine disease, PKU, and sickle hemoglobinopathy;

(5) Recommend to the Mayor any additional screening tests for metabolic disorders that should be added to those required under § 6-313(a);

(6) Recommend to the Mayor any screening tests for metabolic disorders required under § 6-313(a) that should be deleted;

(7) Consider the incidence of each metabolic disorder and the cost of detection and management of each metabolic disorder, and, where appropriate, consult District of Columbia and national experts concerning the medical, psychological, ethical, social and economic effects of programs for the detection and management of metabolic disorders;

(8) Keep the Mayor informed as to new and improved techniques for screening and testing newborns for metabolic disorders; and

(9) Recommend to the Mayor a laboratory or laboratories for designation under § 6-313 (b). (Apr. 29, 1980, D.C. Law 3-65, § 7, 27 DCR 1087; July 25, 1985, D.C. Law 6-13, § 2(c), 32 DCR 3235.)

Legislative history of Law 3-65. — See note to § 6-311.

Legislative history of Law 6-13. — See note to § 6-312.

§ 6-317. Same — Annual report to Mayor and Council.

The Committee shall submit to the Mayor and the Council on January 1st of each year a report summarizing the activities of the Committee, and containing any recommendations to the Mayor and the Council which the Committee deems necessary regarding problems of metabolic disorders. (Apr. 29, 1980, D.C. Law 3-65, § 8, 27 DCR 1087.)

Legislative history of Law 3-65. — See note to § 6-311.

§ 6-318. Assumption of costs by District government.

If a newborn's parents are indigent, the government of the District of Columbia shall pay all costs related to screening under this subchapter. If a newborn's parents are indigent and the child's residence is in the District of Columbia, the government of the District of Columbia shall pay any subsequent costs for follow-up testing and treatment. The Mayor shall define "indigency" under this section and may establish a sliding scale of partial payment by the District of Columbia government based on the parents' reasonable ability to pay some of the costs. (Apr. 29, 1980, D.C. Law 3-65, § 9, 27 DCR 1087; July 25, 1985, D.C. Law 6-13, § 2(d), 32 DCR 3235.)

Legislative history of Law 3-65. — See note to § 6-311.

Legislative history of Law 6-13. — See note to § 6-312.

Delegation of authority pursuant to Law 6-13. — See Mayor's Order 86-36, March 3, 1986.

§ 6-319. Appropriation.

There is hereby authorized to be appropriated out of the general revenues of the District of Columbia government sufficient funds to carry out the requirements of this subchapter. (Apr. 29, 1980, D.C. Law 3-65, § 10, 27 DCR 1087; July 25, 1985, D.C. Law 6-13, § 2(e), 32 DCR 3235.)

Legislative history of Law 3-65. — See note to § 6-311.

Legislative history of Law 6-13. — See note to § 6-312.

§ 6-320. Effective date.

This subchapter shall take effect on October 1, 1980, after a 30-day period of Congressional review following approval by the Mayor (or in the event of veto by the Mayor, action by the Council of the District of Columbia to override the veto) as provided in § 1-233(c)(1). (Apr. 29, 1980, D.C. Law 3-65, § 11, 27 DCR 1087.)

Emergency act amendments. — For temporary authorization for the establishment of a program to provide early intervention services designed to meet the developmental needs of infants and toddlers from birth through 2 years of age and their families on a sliding fee scale to provide a system of payment for early intervention services based on the income of the family, see § 2 of the Early Intervention Services Sliding Fee Scale Establishment Emergency Act of 1994 (D.C. Act 10-320, August 4, 1994, 41 DCR 5369), § 2 of the Early Intervention Services Sliding Fee Scale Establishment Congressional Adjournment Emergency Act of 1994 (D.C. Act 10-329, October 21, 1994, 41 DCR 7160), and § 2 of the Early Intervention Services Sliding Fee Scale Establishment Congressional Adjournment Emergency Act of 1995 (D.C. Act 11-1, January 18, 1995, 42 DCR 537).

Section 3 of D.C. Act 10-320 provides that the

Mayor shall issue rules to implement the provisions of the act.

Section 3 of D.C. Act 10-329 provides that the Mayor shall issue rules to implement the provisions of the act.

Section 3 of D.C. Act 11-1 provides that the Mayor shall issue rules to implement the provisions of the act.

Legislative history of Law 3-65. — See note to § 6-311.

Authorization to establish early intervention services sliding fee scale. — Sections 2 and 3 of D.C. Law 10-199 provided for the establishment of a program to provide early intervention services for infants and toddlers and their families to receive funds pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. § 1471 et seq., and authorized the Mayor to issue rules implementing the provisions of the act, including rules for the estab-

lishment of a sliding fee scale based upon the income of the family.

Section 4(b) of D.C. Law 10-199 provided that

the act shall expire on the 225th day of its having taken effect. D.C. Law 10-199 became effective March 14, 1995.

CHAPTER 4. DRAINAGE OF LOTS.

Sec.

6-401. Lots to be drained into public sewers and connected with water mains.

6-402. Notice of connection requirement.

6-403. Failure to make required connections.

6-404. Nonresident lot owner; notice; failure to make connections; cost of connections.

Sec.

6-405. Definitions; repair, maintenance, and renewal of water service pipes and building sewers; compensation to property owners; false claims for compensation; severability.

§ 6-401. Lots to be drained into public sewers and connected with water mains.

Each original lot or subdivisional lot situated on any street in the District of Columbia where there is a public sewer shall be connected with said sewer in such manner that any and all of the drainage of such lot, whether water or liquid refuse of any kind, except human urine and fecal matter, shall flow into said sewer; and if such original lot or subdivisional lot is situated on any street in said District where there is a public sewer and water main, such original lot or subdivisional lot shall be connected with said sewer and also with said water main in such manner that any and all of the drainage of such lot, whether water or liquid refuse of any kind shall flow into said sewer: Provided, that the connections required to be made by this section shall be made under the following conditions:

(1) When there is on any such original lot or subdivisional lot aforesaid any building used or intended to be used as a dwelling, or in which persons are employed or intended to be employed in any manufacture, trade, or business, or any stable, shed, pen, or place where cows, horses, mules, or other animals are kept, then, and in that instance, such original lot or subdivisional lot shall be connected with a public sewer and water main or with a public sewer, as may be required with this section; and

(2) Whenever there is no such building, stable, shed, pen, or place, as aforesaid, on such original lot or subdivisional lot, then such lot shall be required to be connected with a public sewer only when it has been certified by the Director of the Department of Human Services of said District that such connection is necessary to public health. (May 19, 1896, 29 Stat. 125, ch. 206, § 1; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; 1973 Ed., § 6-401.)

Cross references. — As to drainage requirements for new subdivisions or developments designed to reduce flood hazards, see § 5-302.

As to drainage of burial lots, see § 27-105.

Section references. — This section is referred to in §§ 6-402, 6-403, and 6-405.

Office of Director of Public Health abolished. — See note to § 6-101.

Section not unconstitutional as to nonresident owners. — This section is not uncon-

stitutional as depriving nonresident owners of property without due process of law, nor does it deny them equal protection of the laws although different methods are used for enforcing the law against nonresident and resident owners. *District of Columbia v. Brooke*, 214 U.S. 138, 29 S. Ct. 560, 53 L. Ed. 941 (1909).

Cited in *Kraft v. Lowe*, App. D.C., 77 A.2d 554 (1950).

§ 6-402. Notice of connection requirement.

It shall be the duty of the Mayor of the District of Columbia to notify the owner or owners of every lot required by § 6-401 to be connected with a public sewer or water main, as the case may be, to so connect such lot, the work to be done in accordance with the regulations governing plumbing and house drainage in said District. (May 19, 1896, 29 Stat. 125, ch. 206, § 2; 1973 Ed., § 6-402.)

Cross references. — As to power of Council to make regulations governing plumbing and house drainage, see § 1-1023.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Cited in *Kraft v. Lowe*, App. D.C., 77 A.2d 554 (1950).

§ 6-403. Failure to make required connections.

If the owner or owners of any such lot neglect or refuse to make such connections as are required by § 6-401 within 30 days after the receipt of such notice, such owner or owners shall be deemed guilty of a misdemeanor, and shall, on conviction in the Superior Court of the District of Columbia, be punished by a fine of not less than \$1 nor more than \$5 for each day he, she, or they fail or neglect to make such connections. Civil fines, penalties, and fees may be imposed as alternative sanctions if the owners of any lots neglect or refuse to make the connections required by § 6-401 within 30 days after the receipt of the notice, pursuant to subchapters I through III of Chapter 27 of this title. Adjudication of any infraction shall be pursuant to subchapters I through III of Chapter 27 of this title. (May 19, 1896, 29 Stat. 126, ch. 206, § 3; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570 Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 6-403; Oct. 5, 1985, D.C. Law 6-42, § 477, 32 DCR 4450.)

Legislative history of Law 6-42. — Law 6-42, the "Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985," was introduced in Council and assigned Bill No. 6-187, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 25, 1985, and July 9, 1985, respectively. Signed

by the Mayor on July 16, 1985, it was assigned Act No. 6-60 and transmitted to both Houses of Congress for its review.

Editor's notes. — Near the middle of the second sentence, "connections" has been substituted for "corrections" to correct an error in D.C. Law 6-42.

§ 6-404. Nonresident lot owner; notice; failure to make connections; cost of connections.

In case the owner or owners of any such lot be a nonresident or nonresidents of the District of Columbia, or cannot be found therein, then, and in that case, the Mayor of the District of Columbia shall give notice, by publication twice a week for 2 weeks in some daily newspaper published in the City of Washington to such owner, directing the connection of such lot with such public sewer or with such public sewer and water main, as the case may be: Provided, however, that if the residence or place of abode of the said nonresident lot owner be known or can be ascertained on reasonable inquiry, then, and in that case, a copy of the aforesaid notice shall be mailed to said nonresident, addressed to him in his proper name at his said place of residence or abode, with legal postage prepaid; and in case such owner or owners shall fail or neglect to comply with the notice aforesaid within 30 days it shall be the duty of said Mayor to cause such connection to be made, the expense to be paid out of the emergency fund; such expense, with necessary expense of advertisement, shall be assessed as a tax against such lot, which tax shall be carried on the regular tax roll of the District of Columbia, and shall be collected in the manner provided for the collection of other taxes. (May 19, 1896, 29 Stat. 126, ch. 206, § 4; 1973 Ed., § 6-404.)

Cross references. — As to collection of taxes, see § 47-501 et seq.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced

by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Constitutionality of section. — This section is not unconstitutional as depriving nonresident owners of property without due process of law, nor does it deny them equal protection of the laws although different methods are used for enforcing the law against nonresident and resident owners. *District of Columbia v. Brooke*, 214 U.S. 138, 29 S. Ct. 560, 53 L. Ed. 941 (1909).

Test for application of this section is whether the property owner can be found in the District. *District of Columbia v. Brooke*, 214 U.S. 138, 29 S. Ct. 560, 53 L. Ed. 941 (1909).

§ 6-405. Definitions; repair, maintenance, and renewal of water service pipes and building sewers; compensation to property owners; false claims for compensation; severability.

(a) For the purpose of this section, certain words and terms are defined as follows:

(1) "Parking" means that area of public space which lies between the property line and the edge of the actual or planned sidewalk which is nearer to

such property line, as such property line and sidewalk are shown on the records of the Surveyor of the District of Columbia.

(2) "Property" means real property.

(3) "Property line" means the line beyond which a private property owner has no legal or vested property rights in any fronting or abutting public space or street; the line of demarcation between privately owned property and any public space or street as may be shown on the records of the Surveyor of the District of Columbia.

(4) "Public space" means all the publicly owned property between lines on a street, as such property lines are shown on the records of the Surveyor of the District of Columbia, and includes any roadway, tree space, sidewalk, or parking between such property lines.

(5) "Street" means a public highway as shown on the records of the Surveyor of the District of Columbia whether designated as a street, alley, avenue, freeway, road, drive, lane, place, boulevard, parkway, circle, or by some other term.

(b) The Mayor of the District of Columbia is authorized to repair and maintain and, where necessary, to renew all water service pipes and building sewers from the water main or the public sewer to the property line of each lot in the District of Columbia required to be so connected by § 6-401 at the costs of such owner or owners and to perform all such repairs, as are necessary, to maintain or improve any roadway, alley, minor street, highway or other public space above such repaired or renewed water service pipes or building sewers. The Mayor, where he deems such action necessary, may also perform maintenance or repair work on private property, in which case, the cost, including overhead expense, shall be paid by the property owner. The cost of any repair or maintenance work on water service pipes or building sewers beyond the property line away from the house or structure, made necessary by the negligence or through the action of a property owner or tenant as reasonably determined by the Mayor, shall be charged to the property owner.

(c) The Mayor is further authorized and directed to compensate property owners for any and all expenses incurred at the direction of the District of Columbia for the direct repair of water service pipes or building sewers within the past 3 years from March 29, 1977: Provided, that such repairs at the time of their performances have met the requirements of subsection (b) of this section. Compensation shall be in the form of payment or the removal of a lien or assessment against such property by the District of Columbia only to owners who establish under the requirements of subsection (e) of this section proof of actual payment of repairs under a permit issued by the District of Columbia. All rights to compensation under the terms of this subsection shall terminate 2 years from March 29, 1977.

(d) All prior year compensation payments authorized by subsection (c) of this section and all work required to be done in the repair, maintenance or renewal of water service pipes and building sewers as authorized under subsection (b) of this section including surface repair work not within the right-of-way of streets or alleys shall be paid for from water and sewer rate revenue appropriated to the District of Columbia, except that all surface repair

work to be done upon public space within the roadway, tree space or actual sidewalk right-of-way of any street shall be paid for out of highway revenues appropriated to the District of Columbia.

(e) Before compensation is granted, the Mayor shall determine whether the repair, made under a permit issued by the District of Columbia, would have been authorized under subsection (b) of this section, noting such other pertinent findings of fact as he deems necessary. If the Mayor determines that the repair work would have been eligible under subsection (b) of this section had it been in effect at the time of repair, he shall compensate any person, who was the property owner at the time the repairs were made, for the cost of such repairs, provided such owner can establish proof of payment for the cost of the repairs to the reasonable satisfaction of the Mayor up to the full value thereof for each separate occurrence.

(f) Any person who by means of false statement, or impersonation, or by other fraudulent device obtains or attempts to obtain or any person who knowingly aids or abets such person in obtaining or attempting to obtain: (1) Any award or payment of compensation under the provisions of this section to which he is not entitled; or (2) a larger amount or greater relief in compensation than that to which he is entitled; shall be guilty of a misdemeanor and shall be sentenced to pay a fine of not more than \$500 or imprisoned not to exceed 1 year, or both. Prosecutions under the provisions of this subsection shall be in the name of the District of Columbia by the Office of the Corporation Counsel.

(g) The Mayor is further authorized to prescribe rules and regulations governing the maintenance and repair of such water service pipes and building sewers by the District of Columbia and the compensation of property owners by the District of Columbia for eligible prior year repairs of water service pipes, building sewers and the roadway above such water service pipes and sewers.

(h) If any section, subsection, or provision of this chapter is held to be unconstitutional or invalid, such unconstitutionality or invalidity shall not affect the remaining sections, subsections, or provisions of this chapter. (May 19, 1896, 29 Stat. 126, ch. 206, § 5; 1973 Ed., § 6-405; Mar. 29, 1977, D.C. Law 1-98, § 2, 23 DCR 9532b.)

Legislative history of Law 1-98. — Law 1-98, the "Water and Sewer Repair and Compensation Act of 1976," was introduced in Council and assigned Bill No. 1-319, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on October 12, 1976 and November 22, 1976, respectively. Signed by the Mayor on December 30, 1976, it was assigned Act No. 1-187 and transmitted to both Houses of Congress for its review.

Proper maintenance of water service lines under subsection (b) of this section was held to include attention to undue subsidence of a water line due to loose soil where the water line was in imminent danger of being crushed because of movement due to loose soil following excavations by the Washington Metropolitan Area Transit Authority. *Washington Metro. Area Transit Auth. v. L'Enfant Plaza Properties, Inc.*, App. D.C., 448 A.2d 864 (1982).

CHAPTER 5. GARBAGE.

Sec.

- 6-501. Regulations for the collection and disposal of garbage.
- 6-502. Contracts for collection and disposal of garbage and refuse.
- 6-503. Disposal by feeding to livestock.
- 6-504. Collection and disposal of refuse authorized as municipal function; purchase or lease of facilities; sale of products; gratuities prohibited.
- 6-505. Incinerators for combustible refuse — Condemnation of sites authorized.
- 6-506. Same — Construction authorized.

Sec.

- 6-507. Same — Commencement of operation; other manner of disposal prohibited; exceptions; enforcement.
- 6-508. Same — Penalties.
- 6-509. Same — Purchase of machinery and employment of personnel authorized.
- 6-510. Same — Appropriation authorized; abandonment of leased plant.
- 6-511. Same — Use by certain Maryland and Virginia municipalities.

§ 6-501. Regulations for the collection and disposal of garbage.

The Council of the District of Columbia is hereby authorized to make necessary regulations for the collection and disposition of garbage in the District of Columbia, and to annex to said regulations such penalties as will secure the enforcement thereof. (Mar. 2, 1895, 28 Stat. 758, ch. 176; 1973 Ed., § 6-501.)

Cross references. — As to declaration of cleaning of streets and alleys as municipal function, see § 1-329.

As to sale of street sweepings, see § 1-330.

As to duty of police to enforce garbage regulations, see § 4-115.

As to construction and operation of incinerators for combustible refuse, see §§ 6-505 to 6-511.

New implementing regulations. — Pursuant to this section, the following new regulations were adopted in 1983: The "Solid Waste Regulations Amendments Act of 1983" (D.C. Law 5-20, August 2, 1983, 30 DCR 3331).

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(139) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and

the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Health laws and ordinances are to be liberally construed. Little v. District of Columbia, App. D.C., 62 A.2d 874 (1948), aff'd, 178 F.2d 13 (D.C. Cir. 1949), 339 U.S. 1, 70 S. Ct. 468, 94 L. Ed. 599 (1950).

Unless they appear to violate constitutional rights. — When health laws and ordinances appear to violate a constitutional right, court must carefully weigh the value of the end accomplished. When the abatement of a nuisance is provided for only after notice and hearing, health officers cannot inspect without the ordinary preliminary step for a search, in the absence of immediate danger or nuisance per se. Little v. District of Columbia, App. D.C., 62 A.2d 874 (1948), aff'd, 178 F.2d 13 (D.C. Cir. 1949), 339 U.S. 1, 70 S. Ct. 468, 94 L. Ed. 599 (1950).

Collection and disposal of garbage as health measure. — It is within the police power of the District of Columbia to control and regulate the manner of collection and disposition of garbage, refuse, and filth, and in so doing, the District may provide for the inspection of premises as a health measure. Little v. District of Columbia, App. D.C., 62 A.2d 874 (1948), aff'd, 178 F.2d 13 (D.C. Cir. 1949), 339 U.S. 1, 70 S. Ct. 468, 94 L. Ed. 599 (1950).

Evidence does not show discrimination

in providing municipal services. *Burner v. Washington*, 399 F. Supp. 44 (D.D.C. 1975).

Licenses for business of solid waste disposal. — Where licenses issued for the collection and transportation of solid wastes in or through the District of Columbia did not cover the disposal of solid wastes in the District, a separate disposal fee was a license fee autho-

rized by the statute, to the extent that the revenue therefrom was commensurate with the costs of supervision and regulation. *Metropolitan D.C. Refuse Haulers Ass'n v. Washington*, 479 F.2d 1191 (D.C. Cir. 1973).

Cited in *Director, Office of Workers' Comp. Programs v. Cooper Assocs.*, 607 F.2d 1385 (D.C. Cir. 1979).

§ 6-502. Contracts for collection and disposal of garbage and refuse.

The Mayor is authorized to enter into contracts for the collection and disposal of garbage, waste, refuse, ashes, sewage, and sludge for periods not exceeding 20 years, subject to such criteria as the Council may by act establish and to annual appropriations by Congress: Provided, that any such contract which is for a period of more than 5 years shall not be valid unless, with respect to that particular contract, the Council by a two-thirds vote of its members present and voting has first authorized such an extended contract. (May 18, 1910, 36 Stat. 389, ch. 248; Mar. 3, 1915, 38 Stat. 904, ch. 80; 1973 Ed., § 6-502; Apr. 6, 1978, D.C. Law 2-69, § 4, 24 DCR 6800.)

Legislative history of Law 2-69. — Law 2-69, the "Solid Waste Control Act of 1977," was introduced in Council and assigned Bill No. 2-99, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first, amended first, second

amended first and final readings on July 26, 1977, September 13, 1977, October 11, 1977 and October 25, 1977, respectively. Signed by the Mayor on January 27, 1978, it was assigned Act No. 2-135 and transmitted to both Houses of Congress for its review.

§ 6-503. Disposal by feeding to livestock.

Should the Mayor of the District of Columbia find that the garbage in the District can be disposed of in a sanitary manner and as economically by feeding it to pigs, livestock, and poultry on the land of the Home for the Aged and Infirm, located at Blue Plains, District of Columbia, or on the land of the Workhouse and Reformatory of the District of Columbia, located at Occoquan and Lorton, Virginia, or both, or on such other land as the said Mayor may be able to acquire by purchase or lease in the States of Virginia or Maryland, the said Mayor is authorized to use either or all of said designated lands, or to purchase or lease land in the States of Virginia or Maryland for the purpose, and to adopt the pig, livestock, or poultry-feeding method of disposal. (May 6, 1918, 40 Stat. 541, ch. 67, § 6; 1973 Ed., § 6-503.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)),

appropriate changes in terminology were made in this section.

§ 6-504. Collection and disposal of refuse authorized as municipal function; purchase or lease of facilities; sale of products; gratuities prohibited.

The Mayor of the District of Columbia is authorized, if in his opinion such action shall be to the best interests of the District of Columbia, after July 11, 1919, to conduct any or all of the operations involved in the collection and disposal of city refuse of every kind as municipal functions, and for that purpose to purchase or lease the necessary plants, buildings, and land, to purchase or hire horses and horse-drawn vehicles, passenger-carrying and other motor-propelled vehicles, equipment, and machinery, and to employ expert and other personal services, and labor, and to pay traveling, maintenance, incidental, and contingent expenses: Provided, that products arising from such operations conducted as authorized herein may be sold and the proceeds arising therefrom shall be paid for each fiscal year into the Treasury of the United States to the credit of the General Fund of the District of Columbia: Provided further, that any or all operations herein authorized to be conducted as municipal functions may be put into effect as such upon the expiration of any of the contracts existing July 11, 1919, for the collection and disposal of city refuse or upon the failure of any of the contractors existing July 11, 1919, to properly perform the work covered by their contracts existing July 11, 1919: Provided further, that it shall be unlawful for any employee of the District of Columbia engaged in the removal of garbage, ashes, miscellaneous refuse, dead animals, or night soil, or for any employee of a contractor doing such work for the District of Columbia, to accept any gift, except from his employer, in money or any other thing of value for any service performed in connection with the removal of city refuse as hereinbefore described; and it shall be unlawful for any person, firm, or corporation, except such employer, to pay or offer to pay, any money or to make any gift to any such employee for such service; that any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and shall, upon conviction, be fined in a sum of not less than \$5 nor more than \$40 for each such offense. (July 11, 1919, 41 Stat. 39, ch. 6; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7; June 28, 1944, ch. 300, § 18, 58 Stat. 533; 1973 Ed., § 6-504.)

Cross references. — As to declaration of cleaning of streets and alleys as municipal function, see § 1-329.

As to sale of street sweepings, see § 1-330.

Restriction on public works appropriation. — Public Law 103-334, 108 Stat. 2580, the District of Columbia Appropriations Act, 1995, provided for Public Works, including rental of one passenger-carrying vehicle for use by the Mayor and three passenger-carrying vehicles for use by the Council of the District of Columbia and purchase of passenger-carrying vehicles for replacement only, \$195,002,000:

Provided, That this appropriation shall not be available for collecting ashes or miscellaneous refuse from hotels and places of business.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Collection is a governmental function.

— The collection of garbage by the District of Columbia is a function which is governmental

in nature, so that the District is not liable for damages sustained by passenger in a street car which collides with a garbage truck. *Loube v. District of Columbia*, 92 F.2d 473 (D.C. Cir. 1937).

Licenses for disposal of solid wastes. — Where licenses issued for the collection and transportation of solid wastes in or through the District of Columbia did not cover the disposal of solid wastes in the District, a separate disposal fee was a license fee authorized by the statute, to the extent that the revenue therefrom was commensurate with the costs of supervision and regulation. *Metropolitan D.C. Refuse Haulers Ass'n v. Washington*, 479 F.2d 1191 (D.C. Cir. 1973).

§ 6-505. Incinerators for combustible refuse — Condemnation of sites authorized.

(a) The Mayor of the District of Columbia is authorized to acquire, by purchase at such price or prices as, in his judgment, he may deem reasonable and fair, or in the discretion of the Mayor, by condemnation, in accordance with the provisions of Chapter 13 of Title 16, under a proceeding or proceedings in rem instituted in the Superior Court of the District of Columbia, 2 suitable and properly located sites in the District of Columbia, 1 in the southeastern section not exceeding 100,000 square feet in area, and 1 in Georgetown, not exceeding 49,000 square feet in area: Provided, that the location of said sites shall be approved by the National Capital Planning Commission before purchase or the institution of proceedings for condemnation thereof: Provided, that if the said sites or any part thereof be condemned the said Mayor shall be entitled to enter immediately into possession of any property for which an award shall have been made by paying the amount of such award into the registry of the Superior Court of the District of Columbia: Provided further, that authority is hereby granted to occupy, in addition to the site to be acquired in the southeastern section, such public highways and alleys or parts of public highways and alleys as abut or fall within said site, but the owners of abutting property shall not be denied the use of such highways or parts of highways for ingress and egress.

(b) Nothing shall prevent the Mayor from designating, selecting, or acquiring another site or sites that may be suitable for the purpose of refuse disposal. Any proposed site selected by the Mayor after October 9, 1987, shall be submitted to the Council of the District of Columbia ("Council") for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed site, in whole or in part, by resolution within this 45-day review period, the proposed site shall be deemed approved. Nothing in this section shall affect any requirements imposed upon the Mayor by subchapter I of Chapter 15 of Title 1. (Mar. 4, 1929, 45 Stat. 1549, ch. 688, § 1; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, 84 Stat. 571, Pub. L. 91-358, title I,

§§ 155(c)(21), 166(c); 1973 Ed., § 6-505; Oct. 9, 1987, D.C. Law 7-38, § 6, 34 DCR 5326.)

Section references. — This section is referred to in §§ 6-507, 6-508, 6-509, and 6-510.

Legislative history of Law 7-38. — Law 7-38, the "Litter Control Expansion Amendment Act of 1987," was introduced in Council and assigned Bill No. 7-169, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on June 30, 1987, and July 14, 1987, respectively. Signed by the Mayor on July 23, 1987, it was assigned Act No. 7-66 and transmitted to both Houses of Congress for its review.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Transfer of functions. — The functions, powers and duties of the National Capital Park and Planning Commission were transferred to the National Capital Planning Commission by the Act of July 19, 1952, 66 Stat. 790, ch. 949, § 1.

§ 6-506. Same — Construction authorized.

The said Mayor of the District of Columbia is authorized to erect upon each of said sites a modern, high-temperature refuse incinerator and the necessary equipment for its efficient operation, the combined capacity of such incinerators to be sufficient to consume the entire production of combustible refuse, including street sweepings, in the District of Columbia; and the said Mayor is further authorized to do such grading and fencing of the sites as may be necessary, and to construct buildings for the storage of equipment. (Mar. 4, 1929, 45 Stat. 1549, ch. 688, § 2; 1973 Ed., § 6-506.)

Section references. — This section is referred to in §§ 6-507, 6-508, 6-509, 6-510, and 6-511.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 6-507. Same — Commencement of operation; other manner of disposal prohibited; exceptions; enforcement.

The Mayor of the District of Columbia shall give reasonable public notice thereof and shall fix a date after which all combustible refuse collected by

public or private agencies in the District of Columbia shall be delivered at the incinerators herein provided for, for disposal, except that hotels, apartment houses, business houses, or residences may dispose of their own refuse in their own incinerators: Provided, that such incinerators are inspected and approved for use by the proper agency of the District of Columbia; and after such date it shall be unlawful for any person, firm, company, or corporation to dispose of any combustible refuse in any other manner or at any other place than that prescribed by the said Mayor: Provided, however, that nothing in §§ 6-505 to 6-510 shall prohibit or prevent the sale of salvageable material by the owners thereof or by the Mayor of the District of Columbia. The Council of the District of Columbia is hereby empowered and authorized to make, and the Mayor is hereby empowered and authorized to enforce, such regulations as the Council may deem necessary and proper to carry out the purposes of §§ 6-505 to 6-510. (Mar. 4, 1929, 45 Stat. 1549, ch. 688, § 3; 1973 Ed., § 6-507.)

Cross references. — As to authority of Council to make health and safety regulations, see § 1-319.

As to declaration of cleaning of streets and alleys as municipal function, see § 1-329.

As to sale of street sweepings, see § 1-330.

Section references. — This section is referred to in §§ 6-508, 6-509, and 6-510.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(140) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 6-508. Same — Penalties.

From and after the date when the incinerators herein authorized to be constructed shall be in operation it shall be unlawful for any person, firm, company, or corporation to burn or in any way dispose of combustible refuse in any manner or at any place other than that prescribed by the Mayor of the District of Columbia, except as hereinbefore designated. A violation of the provisions of §§ 6-505 to 6-510 shall be a misdemeanor; and, upon conviction thereof, the person, firm, company, or corporation so charged shall be fined not more than \$100 for each and every offense, or confined in the District of Columbia jail for a period not exceeding 60 days, or both, in the discretion of the courts. Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this chapter, or any rules or regulations issued under the authority of this chapter, pursuant to subchapters I through III of Chapter 27 of this title. Adjudication of any infraction of this chapter shall be pursuant to subchapters I through III of Chapter 27 of this title. (Mar. 4, 1929, 45 Stat. 1549, ch. 688, § 4; Oct. 5, 1985, D.C. Law 6-42, § 458, 32 DCR 4450.)

Section references. — This section is referred to in §§ 6-507, 6-509, and 6-510.

Legislative history of Law 6-42. — Law 6-42, the "Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985," was introduced in Council and assigned Bill No. 6-187, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 25, 1985, and July 9, 1985, respectively. Signed by the Mayor on July 16, 1985, it was assigned Act No. 6-60 and transmitted to both Houses of Congress for its review.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of

Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 6-509. Same — Purchase of machinery and employment of personnel authorized.

In order to dispose of combustible refuse in the manner provided by §§ 6-505 to 6-510, the Mayor of the District of Columbia is authorized to purchase motor trucks and trailers and other means of transportation, to install additional equipment, buildings, and machinery, and to employ personal services and labor. (Mar. 4, 1929, 45 Stat. 1550, ch. 688, § 5; 1973 Ed., § 6-509.)

Section references. — This section is referred to in §§ 6-507, 6-508, and 6-510.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 6-510. Same — Appropriation authorized; abandonment of leased plant.

A sum not exceeding \$850,000 is hereby authorized to be appropriated, in like manner as other appropriations, for the expenses of the District of Columbia, for sites, buildings, equipment, and other construction work authorized by §§ 6-505 to 6-510, of which amount \$25,000 or so much thereof as may be necessary may be expended for the employment of 1 or more experts for engineering for preparation of plans and specifications; and, upon completion of the incinerators herein provided for, the Mayor of the District of Columbia shall abandon the use of the leased plant at Montello Avenue and Mount Olivet Road Northeast. (Mar. 4, 1929, 45 Stat. 1550, ch. 688, § 6; 1973 Ed., § 6-510.)

Section references. — This section is referred to in §§ 6-507, 6-508, and 6-509.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 6-511. Same — Use by certain Maryland and Virginia municipalities.

The Mayor of the District of Columbia is authorized to enter into agreement with the Board of County Commissioners of Montgomery County, State of Maryland; the Board of County Commissioners of Prince Georges County, State of Maryland; the Arlington County Board, State of Virginia, and/or with the several municipalities, taxing areas, and communities within the Counties aforesaid having power and authority to enter into such agreements, said agreements to permit said Counties, municipalities, taxing areas, and communities to dispose of combustible material in the incinerators built by the District of Columbia under authority of § 6-506, in such kind and quantities, at such times, and for such fees as the Council of the District of Columbia shall specify: Provided, that said Counties, municipalities, taxing areas, and communities shall make collections of such material with their own equipment and shall obtain permits from the District of Columbia for hauling or transporting the material over routes within the District of Columbia to be designated by the said Council. The Mayor shall have the right to suspend or revoke such agreements if found necessary for the proper and successful operation of these incinerators, or for any other reason. (May 15, 1930, 46 Stat. 334, ch. 286; 1973 Ed., § 6-511.)

Cross references. — As to agreements with Maryland for use of District sewers, see § 1-1120.

As to authorization for sewerage agreement with Virginia, see § 1-1122.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(141) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

CHAPTER 6. PRIVIES.

Sec.

6-601. Waterclosets required.

6-602. Permit required to maintain privy.

Sec.

6-603. Regulation of waste disposal systems.

6-604. Penalties.

§ 6-601. Waterclosets required.

It shall be unlawful for any person or persons to maintain, upon any original lot or any subdivisional lot, situated on any street in the District of Columbia, where there is a public sewer and watermain available for the use of such lot, any system of disposal of human excreta except by means of waterclosets connected with such sewer and watermain. (Apr. 22, 1940, 54 Stat. 155, ch. 131, § 2; 1973 Ed., § 6-701.)

Cited in *Kraft v. Lowe*, App. D.C., 77 A.2d 554 (1950).

§ 6-602. Permit required to maintain privy.

No person shall, in the District of Columbia, erect or maintain a privy, or other means or system for the disposal of human excreta, except by means of waterclosets connected with a sewer and watermain, without having secured from the Director of the Department of Human Services a permit so to do. (Apr. 22, 1940, 54 Stat. 155, ch. 131, § 3; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; 1973 Ed., § 6-702.)

Office of Director of Public Health abolished. — See note to § 6-101.

§ 6-603. Regulation of waste disposal systems.

The Council of the District of Columbia is hereby authorized and empowered to make, and the Mayor of the District of Columbia is hereby authorized and empowered to enforce, any such regulations as the Council deems necessary to regulate the design, construction, and maintenance of any system of disposal of human excreta, and the handling, storage, treatment, and disposal of human body wastes. (Apr. 22, 1940, 54 Stat. 155, ch. 131, § 4; 1973 Ed., § 6-703.)

Cross references. — As to authority of Council to make health and safety regulations, see § 1-319.

New implementing regulations. — Pursuant to this section, the following new regulations were adopted in 1982: The "District of Columbia Solid Waste Disposal Fee Act of 1982" (D.C. Law 4-135, August 14, 1982, 29 DCR 2751).

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of

Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(143) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced

by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to

§ 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 6-604. Penalties.

Any person who shall violate or aid or abet in violating any of the provisions of this chapter or of the regulations promulgated by the Council of the District of Columbia under this chapter shall be punished by a fine of not more than \$50 or by imprisonment for not exceeding 15 days. Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this chapter, or any rules or regulations issued under the authority of this chapter, pursuant to subchapters I through III of Chapter 27 of this title. Adjudication of any infraction of this chapter shall be pursuant to subchapters I through III of Chapter 27 of this title. (Apr. 22, 1940, 54 Stat. 155, ch. 131, § 5; 1973 Ed., § 6-704; Oct. 5, 1985, D.C. Law 6-42, § 449, 32 DCR 4450.)

Legislative history of Law 6-42. — Law 6-42, the “Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985,” was introduced in Council and assigned Bill No. 6-187, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 25, 1985, and July 9, 1985, respectively. Signed by the Mayor on July 16, 1985, it was assigned Act No. 6-60 and transmitted to both Houses of Congress for its review.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(143)

of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

CHAPTER 7. HAZARDOUS WASTE MANAGEMENT.

Subchapter I. General Provisions.

Sec.

- 6-701. Purposes and findings.
- 6-702. Definitions.
- 6-703. Permits.
- 6-704. Hazardous waste management plan.
- 6-705. Rules and regulations.
- 6-706. Variance.
- 6-707. Inspections; analyses; right of entry; notice; posting.
- 6-708. Appeal procedures.
- 6-709. Suspension and revocation of permit.
- 6-710. Injunction.
- 6-711. Penalties.
- 6-712. Severability.
- 6-713. Dust suppression and road treatment.
- 6-714. Actions against guarantor.

Subchapter II. Radioactive Wastes.

6-721, 6-722. [Expired].

Subchapter III. Toxic Source Reduction.

Sec.

- 6-731. Hazardous waste and toxic chemical source reduction.
- 6-732. Identification of major generators of hazardous waste and releasers of toxic chemicals.
- 6-733. Annual hazardous waste and toxic chemical reports.
- 6-734. Hazardous waste and toxic chemical source reduction plans.
- 6-735. Establishment of a Hazardous Waste and Toxic Chemical Release Source Reduction Fund and fee.
- 6-736. Hazardous waste and toxic chemical fee waivers.
- 6-737. Confidential business information.
- 6-738. Rules.

Subchapter I. General Provisions.

§ 6-701. Purposes and findings.

(a) The purposes of this chapter are:

- (1) To insure safe and effective hazardous waste management;
- (2) To establish a program of regulation over the generation, storage, transportation, treatment, and disposal of hazardous waste and fuel containing hazardous waste and the production, marketing, distribution, and burning of fuel produced from or containing hazardous waste; and
- (3) To reduce or eliminate at the source, wherever feasible and as expeditiously as possible, the generation of hazardous waste and the release of toxic chemicals in the District of Columbia.

(b) The Council of the District of Columbia finds that:

- (1) Increasing production and consumption rates, continuing technological development, and energy requirements have led to the generation of greater quantities of hazardous waste;
- (2) The problems of disposing of hazardous waste are increasing as a result of air and water pollution controls and a shortage of available landfill sites;
- (3) While it is technologically and financially feasible for hazardous waste generators to reduce and eliminate wastes generated, and to dispose of their wastes in a manner which has a less adverse impact on the environment than current practices, such knowledge is not being utilized to the extent possible;
- (4) Even though the District of Columbia is not heavily industrialized, there is a significant daily hazardous waste disposal problem;
- (5) The public health and safety, and the environment, are threatened where hazardous wastes are not managed in an environmentally sound manner;

(6) In accordance with section 101(b) of the Federal Solid Waste Disposal Act, approved November 8, 1984 (98 Stat. 3224; 42 U.S.C. 6902(b)), it is the policy of the District of Columbia that, wherever feasible, the generation of hazardous waste and the release of toxic chemicals is to be reduced or eliminated as expeditiously as possible; and

(7) Other states and local jurisdictions that have implemented source reduction technical assistance programs for businesses have shown programs to be cost-effective. (1973 Ed., § 6-521; Mar. 16, 1978, D.C. Law 2-64, § 2, 24 DCR 6289; Aug. 10, 1984, D.C. Law 5-103, § 2(a), 31 DCR 3032; Oct. 18, 1989, D.C. Law 8-37, § 2(a), 36 DCR 5748; Mar. 8, 1991, D.C. Law 8-229, title I, § 102(a), 38 DCR 246.)

Cross references. — As to water pollution control, see subchapter III of Chapter 9 of this title.

Legislative history of Law 2-64. — Law 2-64, the "District of Columbia Hazardous Waste Management Act of 1977," was introduced in Council and assigned Bill No. 2-163, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on November 22, 1977 and December 6, 1977, respectively. Signed by the Mayor on January 20, 1978, it was assigned Act No. 2-133 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-103. — Law 5-103, the "Hazardous Waste Management Amendments Act of 1984," was introduced in Council and assigned Bill No. 5-381, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on April 30, 1984, and May 15, 1984, respectively. Signed by the Mayor on June 6, 1984, it was

assigned Act No. 5-144 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-37. — See note to § 6-713.

Legislative history of Law 8-229. — See note to § 6-731.

Air quality control regulations enacted. — Section 3 of D.C. Law 5-165, as amended by § 15 of D.C. Law 6-192, effective February 24, 1987, enacted air quality control regulations of the District of Columbia as Chapters 1 through 9 of Title 20 of the District of Columbia Municipal Regulations, "Environment and Energy".

Section 485 of D.C. Law 6-42 amended §§ 100.4 and 105.1 of the Air Quality Control Regulations, effective March 15, 1985 (D.C. Law 5-165; 20 DCMR Chapters 1 through 9) to provide for adjudication of infractions pursuant to Chapter 27 of Title 6. Section 501(b) of D.C. Law 6-42 provided that the provisions of the act shall apply only to infractions which occur or are discovered by inspection after October 5, 1985.

§ 6-702. Definitions.

For purposes of this chapter:

(1) The term "disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any hazardous waste into or on any land or water so that such hazardous waste or any constituent thereof may enter the environment, be emitted into the air, or discharged into any waters, including ground waters.

(1A) The term "guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator.

(2) The term "hazardous waste" means any waste or combination of wastes of a solid, liquid, contained gaseous, or semisolid form which, because of its quantity, concentration, or physical, chemical, or infectious characteristics, as established by the Mayor, may: (1) Cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or (2) pose a substantial present or potential hazard to

human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed. Such wastes include, but are not limited to, those which are toxic, carcinogenic, flammable, irritants, strong sensitizers, or which generate pressure through decomposition, heat or other means, as well as containers and receptacles previously used in the transportation, storage, use or application of the substances described as a hazardous waste.

(3) The term “generation” means the act or process of producing hazardous waste.

(3A) The term “generator” means any person by site whose act or process produces hazardous waste or whose act first causes a hazardous waste to be subject to regulation.

(3B) The term “manifest” means the form used for identifying the quantity, composition, and the origin, routing and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment, or storage.

(4) The term “Mayor” means the Mayor of the District of Columbia or his or her designated agent.

(5) The term “person” means any individual, partnership, corporation (including a government corporation), trust, association, firm, joint-stock company, organization, commission, the District or federal government, or other entity.

(5A) The term “person responsible” means a person who is or has been the generator of hazardous waste, the owner or operator of a site that contains or a vehicle that transports hazardous waste, or a person who by contract, agreement, or otherwise arranges or has arranged for disposal or treatment of hazardous waste.

(5B)(A) The term “source reduction” means any practice that:

(i) Reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment, including fugitive emissions, prior to recycling, treatment, or disposal; and

(ii) Reduces the hazard to public health and the environment associated with the release of a hazardous substance, pollutant, or contaminant.

(B) The term “source reduction” includes equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, or inventory control.

(C) The term “source reduction” does not include any practice that alters the physical, chemical, or biological characteristics or the volume of a hazardous substance, pollutant, or contaminant through a process or activity that is not integral to and necessary for the production of a product or the provision of a service.

(6) The term “storage” means containment in such a manner as not to constitute disposal.

(6A) The term “toxic chemical” means a chemical or chemical category listed in 40 CFR 372.65.

(7) The term “transport” means the movement from the point of generation to any intermediate site, and finally to the point of ultimate storage or disposal.

(8) The term “treatment” means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of a hazardous waste so as to neutralize or as to render it nonhazardous, safer for transport, amenable for recovery or storage, or reduced in volume.

(9) The term “treatment facility” means a location for treatment, including an incinerator or a facility where generation has occurred. (1973 Ed., § 6-522; Mar. 23, 1978, D.C. Law 2-64, § 3, 24 DCR 6289; Aug. 10, 1984, D.C. Law 5-103, § 2(b), 31 DCR 3032; Oct. 18, 1989, D.C. Law 8-37, § 2(b), 36 DCR 5748; Mar. 8, 1991, D.C. Law 8-229, title I, § 102(b), 38 DCR 246; Feb. 5, 1994, D.C. Law 10-68, § 15(a), 40 DCR 6311.)

Effect of amendments. — D.C. Law 10-68 made amendments to the organic act.

Legislative history of Law 2-64. — See note to § 6-701.

Legislative history of Law 5-103. — See note to § 6-701.

Legislative history of Law 8-37. — See note to § 6-713.

Legislative history of Law 8-229. — See note to § 6-731.

Legislative history of Law 9-149. — Law 9-149, the “Environmental Policy and Hazardous and Solid Waste Temporary Amendment Act of 1992,” was introduced in Council and assigned Bill No. 9-522. The Bill was adopted on first and second readings on May 6, 1992,

and June 2, 1992, respectively. Signed by the Mayor on June 19, 1992, it was assigned Act No. 9-229 and transmitted to both Houses of Congress for its review. D.C. Law 9-149 became effective on September 10, 1992.

Legislative history of Law 10-68. — D.C. Law 10-68, the “Technical Amendments Act of 1993,” was introduced in Council and assigned Bill No. 10-166, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 23, 1993, it was assigned Act No. 10-107 and transmitted to both Houses of Congress for its review. D.C. Law 10-68 became effective on February 5, 1994.

§ 6-703. Permits.

(a) It is unlawful to own, construct, substantially alter, or operate any hazardous waste treatment, storage, or disposal facility or site or to generate, store, transport, treat, or dispose of any hazardous waste except in accordance with the terms of the permit issued by the Mayor for the facility, site, or activity.

(b) The Mayor may issue, vary, or modify the terms of a permit or suspend, revoke, or deny a permit to achieve the purposes of this chapter, except that the Mayor may not issue a permit for a period that exceeds 10 years. The terms of any permit for a treatment, storage, or disposal facility shall require that the permit holder take corrective action within or beyond the facility boundary if necessary to protect human health and the environment. The Mayor may establish the appropriate permit fee according to costs associated with its issuance. (1973 Ed., § 6-523; Mar. 23, 1978, D.C. Law 2-64, § 4, 24 DCR 6289; Aug. 10, 1984, D.C. Law 5-103, § 2(c), 31 DCR 3032; Oct. 18, 1989, D.C. Law 8-37, § 2(c), 36 DCR 5748.)

Section references. — This section is referred to in § 6-709.

Legislative history of Law 2-64. — See note to § 6-701.

Legislative history of Law 5-103. — See note to § 6-701.

Legislative history of Law 8-37. — See note to § 6-713.

§ 6-704. Hazardous waste management plan.

Within 6 months of the effective date of this chapter, the Mayor shall publish in the District of Columbia Register a hazardous waste management plan for the District of Columbia, which shall include, as a minimum:

(1) A description of the criteria for determining what constitutes a hazardous waste;

(2) Identification of the types and quantities of hazardous wastes generated in the District of Columbia, of hazardous wastes which may be amenable for recycling or reuse, of current hazardous waste management practices, of proper procedures for the handling, storage and transportation of hazardous wastes and of the best methods and facilities or sites (including possible extrajurisdictional sites) for the storage, treatment or disposal of hazardous wastes; and

(3) A comparison of the alternatives, costs and benefits of public and private transportation, storage, treatment, and disposal of hazardous wastes. (1973 Ed., § 6-524; Mar. 23, 1978, D.C. Law 2-64, § 5, 24 DCR 6289.)

Section references. — This section is referred to in § 6-705.

Legislative history of Law 2-64. — See note to § 6-701.

§ 6-705. Rules and regulations.

(a) Within 3 months after publication of the plan required in § 6-704, the Mayor shall adopt, in accordance with § 1-1506, and may thereafter revise as appropriate, rules and regulations necessary to carry out the purposes and provisions of this chapter, including, but not limited to, rules and regulations regarding the following aspects of proper hazardous waste management:

(1) Criteria for determining what constitutes a hazardous waste;

(2) Generation, storage, treatment, and disposal of hazardous wastes;

(3) Transportation, containerization, and labeling of hazardous wastes (consistent with those issued by the United States Department of Transportation);

(4) On-site handling, including the separation and combination of hazardous wastes;

(5) Operation and maintenance of hazardous waste treatment or disposal facilities or sites;

(6) Certification of supervisory personnel at hazardous waste treatment or disposal facilities or sites;

(7) Procedures and requirements for the use of a manifest or form which identifies the quantity, composition, origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment, or storage;

(8) Marketing, distribution, and burning of fuel produced from a hazardous waste or containing a hazardous waste; and

(9) Requirements for on-site and off-site corrective action by owners or operators of a disposal, storage, and treatment facility.

(b) At the time of publication of the proposed rules and regulations referred to in this section, a copy of the same shall be provided to the Council of the District of Columbia.

(c) The proposed rules shall be submitted to the Council for a 45-day period of review excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved. (1973 Ed., § 6-525; Mar. 23, 1978, D.C. Law 2-64, § 6, 24 DCR 6289; Aug. 10, 1984, D.C. Law 5-103, § 2(d), 31 DCR 3032; Oct. 18, 1989, D.C. Law 8-37, § 2(d), 36 DCR 5748.)

Legislative history of Law 2-64. — See note to § 6-701.

Legislative history of Law 8-37. — See note to § 6-713.

Legislative history of Law 5-103. — See note to § 6-701.

§ 6-706. Variance.

The Mayor may grant a variance not to exceed 180 days upon a showing that compliance with the requirements of this chapter or the rules and regulations promulgated pursuant thereto would result in an unreasonable financial hardship, and that the public health and welfare would not be endangered. (1973 Ed., § 6-526; Mar. 23, 1978, D.C. Law 2-64, § 7, 24 DCR 6289.)

Legislative history of Law 2-64. — See note to § 6-701.

§ 6-707. Inspections; analyses; right of entry; notice; posting.

(a) For the purpose of enforcing this chapter or any rule or regulation promulgated pursuant to this chapter, the Mayor may at any reasonable time, within reasonable limits, and in a reasonable manner, upon presenting appropriate credentials to the owner, operator or agent in charge:

(1) Enter without delay any place where hazardous wastes are or have been generated, stored, treated, transported, or disposed;

(2) Inspect and obtain samples of any waste, or substance used in the treatment of waste;

(3) Inspect and copy any records, reports, information, or test results relating to the purposes of this chapter. Each such inspection shall be commenced and completed with reasonable promptness.

(b) If the officer or employee obtains any samples prior to leaving the premises, he or she shall give to the owner, operator, or agent in charge, a receipt describing the sample obtained, and if requested, a portion of each such sample equal in volume or weight to the portion retained. If any analysis is made of such samples, a copy of the results of such analysis shall be furnished promptly to the owner, operator, or agent in charge.

(c) When there is a threat to human health or the environment, or a release of hazardous waste into the environment, and the responsible party or address is unknown, or cannot be located, written notice shall be served by conspicuously posting the notice on the property where the threat exists or the release occurred and sending a copy to the last known address via certified mail.

(d) When dangerous chemicals and hazardous waste on property pose an imminent threat to human health or the environment, the Mayor may post the property and restrict access. The posting shall provide the public with notice that a dangerous condition exists and shall prohibit the owner from removing or handling the waste without prior approval by the Mayor. (1973 Ed., § 6-527; Mar. 23, 1978, D.C. Law 2-64, § 8, 24 DCR 6289; Aug. 10, 1984, D.C. Law 5-103, § 2(e), 31 DCR 3032; Oct. 18, 1989, D.C. Law 8-37, § 2(e), 36 DCR 5748.)

Legislative history of Law 2-64. — See note to § 6-701.

Legislative history of Law 8-37. — See note to § 6-713.

Legislative history of Law 5-103. — See note to § 6-701.

§ 6-708. Appeal procedures.

Any person adversely affected by an action taken pursuant to the provisions of this chapter or the rules and regulations promulgated thereto is entitled to a hearing before the Mayor upon filing with the Mayor, within 15 days of the date of such action, a written request for a hearing. Such hearing shall be held in accordance with other contested case procedures under the provisions of the District of Columbia Administrative Procedure Act (D.C. Code, § 1-1509). The decision on the appeal shall be final. (1973 Ed., § 6-528; Mar. 23, 1978, D.C. Law 2-64, § 9, 24 DCR 6289.)

Legislative history of Law 2-64. — See note to § 6-701.

§ 6-709. Suspension and revocation of permit.

(a)(1) The Mayor may suspend a permit issued in accordance with § 6-703 if the holder of the permit is in violation of this chapter or the rules promulgated pursuant to the chapter.

(2) Written notice of the suspension shall be served upon the affected party or the party's designated agent.

(b)(1) Where a permit has been suspended, the person affected has the right to reapply for a permit.

(2) If the person is able to demonstrate an ability and willingness to comply with the permit and with the provisions of this chapter and the rules, the Mayor may grant a new permit.

(c)(1) Where there is a history of repeated violations or where a permit has been previously suspended, the Mayor may revoke a permit, upon a showing of subsequent violation, and upon providing the affected party, or the party's designated agent, with written notice of the intent to revoke the permit and with an opportunity for a hearing prior to revocation.

(2) The revocation shall take effect 15 days after the notice has been given, unless a written request for a hearing is received by the Mayor within that period.

(d) The Mayor may immediately revoke a permit upon an initial violation of the chapter or the rules where the violation presents an imminent and substantial endangerment to the public health, the public welfare, or the environment. (1973 Ed., § 6-529; Mar. 23, 1978, D.C. Law 2-64, § 10, 24 DCR 6289; Aug. 10, 1984, D.C. Law 5-103, § 2(f), 31 DCR 3032.)

Legislative history of Law 2-64. — See note to § 6-701.

Legislative history of Law 5-103. — See note to § 6-701.

§ 6-710. Injunction.

If the Mayor finds that any person is operating a storage, treatment, or disposal facility, or is generating or transporting hazardous wastes in an illegal, unsafe, or otherwise improper manner that endangers the public health, the public welfare, or the environment, the Mayor may request the Corporation Counsel to commence appropriate civil action in the Superior Court of the District of Columbia to secure a temporary restraining order, a preliminary injunction, a permanent injunction, or other appropriate relief. (1973 Ed., § 6-530; Mar. 23, 1978, D.C. Law 2-64, § 11, 24 DCR 6289; Aug. 10, 1984, D.C. Law 5-103, § 2(g), 31 DCR 3032.)

Legislative history of Law 2-64. — See note to § 6-701.

Legislative history of Law 5-103. — See note to § 6-701.

§ 6-711. Penalties.

(a)(1) Whenever the Mayor has reason to believe that there has been a violation of this chapter, the rules promulgated pursuant to this chapter, a threat to human health or the environment, or a release of hazardous waste into the environment, the Mayor may give written notice of the alleged violation, threat, or release to the person responsible and order the person to monitor, test, or take corrective measures that the Mayor considers reasonable and necessary.

(2) The notice shall state the nature of the violation, threat, or release and allow a reasonable time for the performance of the necessary corrective measures.

(A) If a person fails to comply with the notice within the time period stated in the notice, the Mayor shall take corrective action necessary to alleviate or terminate the violation, threat, or release to protect human health or the environment.

(B) The Mayor may recover the costs of corrective action incurred by the District of Columbia government from any person responsible by requesting the Corporation Counsel to commence appropriate civil action in the Superior Court of the District of Columbia.

(b)(1) Any person who violates this chapter or the rules shall be liable for a civil penalty in an amount not to exceed \$25,000 for each violation.

(2) For any violation, each day of the violation shall constitute a separate offense and the penalties prescribed shall apply separately to each offense.

(c)(1) Any person who knowingly violates this chapter or the rules shall be punished by a fine not to exceed \$25,000 or imprisonment not to exceed 1 year, or both.

(2) For any violation, each day of the violation shall constitute a separate offense and the penalties prescribed shall apply separately to each offense.

(3) Prosecutions for violations of this subsection shall be brought by the Corporation Counsel.

(d) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this chapter, or any rules or regulations issued under the authority of this chapter, pursuant to subchapters I through III of Chapter 27 of this title. Adjudication of any infraction of this chapter shall be pursuant to subchapters I through III of Chapter 27 of this title. (1973 Ed., § 6-531; Mar. 23, 1978, D.C. Law 2-64, § 12, 24 DCR 6289; Aug. 10, 1984, D.C. Law 5-103, § 2(h), 31 DCR 3032; Oct. 5, 1985, D.C. Law 6-42, § 418, 32 DCR 4450; Oct. 18, 1989, D.C. Law 8-37, § 2(f), 36 DCR 5748.)

Cross references. — As to conduct of criminal prosecutions generally, see § 23-101.

Legislative history of Law 2-64. — See note to § 6-701.

Legislative history of Law 5-103. — See note to § 6-701.

Legislative history of Law 6-42. — Law 6-42, the "Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985," was introduced in Council and assigned Bill No.

6-187, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 25, 1985, and July 9, 1985, respectively. Signed by the Mayor on July 16, 1985, it was assigned Act No. 6-60 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-37. — See note to § 6-713.

§ 6-712. Severability.

Each separate provision of this chapter shall be deemed independent of any other provision of this chapter, and if any provision, sentence, clause, section, or part thereof is held illegal, invalid, or unconstitutional or inapplicable to any person or circumstance, such illegality, invalidity, unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections, or parts of this chapter or their application to other parts or circumstances. It is hereby declared to be the legislative intent that this chapter would have been enacted if such illegal, invalid, or unconstitutional provision, sentence, clause, section, or part had not been included therein, and if the person or circumstances to which this chapter or any part thereof is inapplicable had been specifically exempted therefrom. (1973 Ed., § 6-532; Mar. 23, 1978, D.C. Law 2-64, § 13, 24 DCR 6289.)

Legislative history of Law 2-64. — See note to § 6-701.

§ 6-713. Dust suppression and road treatment.

The use of waste, used oil, or other material, which is contaminated or mixed with dioxin or any other hazardous waste for dust suppression or road

treatment in the District of Columbia, is prohibited. (Mar. 23, 1978, D.C. Law 2-64, § 15, as added Oct. 18, 1989, D.C. Law 8-37, § 2(g), 36 DCR 5748.)

Legislative history of Law 8-37. — Law 8-37, the “District of Columbia Hazardous Waste Management Act of 1977 Amendment Act of 1989,” was introduced in Council and assigned Bill No. 8-216, which was referred to the Committee on Public Works. The Bill was

adopted on first and second readings on June 27, 1989 and July 11, 1989, respectively. Signed by the Mayor on July 27, 1989, it was assigned Act No. 8-66 and transmitted to both Houses of Congress for its review.

§ 6-714. Actions against guarantor.

(a) Any claim arising from conduct of an owner or operator of a hazardous waste treatment, storage, or disposal facility for which evidence of financial responsibility is required, may be asserted directly against the guarantor that provides evidence of financial responsibility if:

(1) The owner or operator is in bankruptcy, reorganization, or arrangement pursuant to 11 U.S.C. § 101 et seq.; or

(2) The owner or operator is likely to be solvent at the time of judgment, but jurisdiction cannot be obtained with reasonable diligence in any state or federal court.

(b) In any claim asserted against a guarantor pursuant to subsection (a) of this section, the guarantor shall be entitled to invoke all rights and defenses that would have been available to the owner or operator of the hazardous waste storage, treatment, or disposal facility if an action had been brought against the owner or operator by the claimant and that would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.

(c) The total liability of any guarantor shall be limited to the aggregate amount that the guarantor has provided as evidence of financial responsibility to the owner or operator. (Mar. 23, 1978, D.C. Law 2-64, § 16, as added Oct. 18, 1989, D.C. Law 8-37, § 2(g), 36 DCR 5748.)

Legislative history of Law 8-37. — See note to § 6-713.

Subchapter II. Radioactive Wastes.

§§ 6-721, 6-722. Northeast Interstate Low-Level Radioactive Waste Management Compact; Mayor directed to propose legislation.

Expired.

Legislative history of Law 6-159. — Law 6-159, the “Low-Level Radioactive Waste Policy Amendments Act of 1985 Regional Compact Compliance Temporary Act of 1986,” was introduced in Council and assigned Bill No. 6-489. The Bill was adopted on first and second readings on June 24, 1986 and July 8, 1986, respec-

tively. Signed by the Mayor on July 16, 1986, it was assigned Act No. 6-204 and transmitted to both Houses of Congress for its review.

Expiration of subchapter. — Section 4(b) of D.C. Law 6-159 provided that the act shall expire on 180 days after taking effect. D.C. Law 6-159 took effect September 23, 1986.

Subchapter III. Toxic Source Reduction.

§ 6-731. Hazardous waste and toxic chemical source reduction.

Within 1 year from March 8, 1991, the Mayor shall:

(1) Provide general information that publicizes the advantages of and opportunities for hazardous waste and toxic chemical source reduction, including the requirements of this subchapter, to government agencies, business and trade associations, business conferences, and trade fairs;

(2) Prioritize and target business sectors that require the greatest assistance in accordance with § 6-732;

(3) Provide assistance to any business identified in § 6-732, as well as other businesses, through the transfer of technical information from other source reduction programs, data bases, and research institutes. The Mayor may facilitate research relationships with universities or other institutions to promote the purposes of this subchapter;

(4) Establish, at a minimum, a library of source reduction literature pertinent to District businesses identified in accordance with § 6-732 that contains an on-line computer link-up with established pollution prevention data bases that include data bases operated by the United States Environmental Protection Agency ("EPA");

(5) Prepare and present conferences, seminars, publications, and other programs as may be appropriate to provide targeted businesses with access to the information available on hazardous waste and toxic chemical source reduction;

(6) Train designated inspectors to assess hazardous waste and toxic chemical source reduction plans and audits;

(7) Secure funding and provide for coordination to the maximum extent practicable between designated District government agencies and the EPA to promote the use of source reduction techniques by businesses, training, and other programs in accordance with section 6605 of the Omnibus Budget Reconciliation Act of 1990, approved November 5, 1990 (Pub. L. No. 101-508) ("Pollution Prevention Act"); and

(8) Assess and collect a fee on the generation of hazardous waste and emission of toxic chemicals. (Mar. 16, 1978, D.C. Law 2-64, § 17, as added Mar. 8, 1991, D.C. Law 8-229, title I, § 102(c), 38 DCR 246.)

Legislative history of Law 8-229. — Law 8-229, the "Toxic Source Reduction Business Assistance Amendment Act of 1990," was introduced in Council and assigned Bill No. 8-695, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on December 4, 1990, and December 18, 1990, respectively. Signed by the Mayor on

December 27, 1990, it was assigned Act No. 8-312 and transmitted to both Houses of Congress for its review.

References in text. — Section 6605 of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101-508, the Pollution Prevention Act, referred to in (7), is codified as 42 U.S.C. § 13104.

§ 6-732. Identification of major generators of hazardous waste and releasers of toxic chemicals.

(a) Within 180 days of March 8, 1991, the Mayor shall determine and present to the Council a report that identifies the following:

(1) Businesses that belong to the 3 largest 3-digit United States Department of Commerce Standard Industrial Classifications ("SICs") of generators of hazardous waste in the District;

(2) Businesses that belong to the 3 largest 3-digit SIC users of toxic chemicals in the District;

(3) Businesses that belong to the 3 largest 3-digit SIC releasers of toxic chemicals in the District; and

(4) The top 25% of businesses, including any District or United States government operations, that generate or release the largest amount of hazardous waste or toxic chemicals in the District.

(b) Within 30 days after the Mayor has presented the report specified in subsection (a) of this section to the Council, the Mayor shall notify in writing each business identified that the business is subject to the provisions of this subchapter.

(c) Every 4 years following March 8, 1991, the Mayor shall reassess the findings required by subsection (a) of this section and make any change in the reporting or targeting of technical assistance indicated. (Mar. 16, 1978, D.C. Law 2-64, § 18, as added Mar. 8, 1991, D.C. Law 8-229, title I, § 102(c), 38 DCR 246.)

Section references. — This section is referred to in §§ 6-731 and 6-733.

Legislative history of Law 8-229. — See note to § 6-731.

§ 6-733. Annual hazardous waste and toxic chemical reports.

(a) Within 270 days of March 8, 1991, and annually thereafter, a business shall submit EPA Form R to the Mayor, including Part III #8, pursuant to 40 CFR 372.85, if the business:

(1) Releases a toxic chemical subject to regulation in accordance with 40 CFR 372;

(2) Generates hazardous waste subject to regulation in accordance with 40 CFR 261, 262, 263, or 264; or

(3) Is identified in § 6-732.

(b) The Mayor shall require the submission of additional source reduction and recycling data collected in accordance with section 6607 of the Pollution Prevention Act, or other federal legislation or regulations.

(c) EPA Form R, and any additional data required, shall be signed by a senior-level manager who shall be liable for any inaccuracies contained in the submission. (Mar. 16, 1978, D.C. Law 2-64, § 19, as added Mar. 8, 1991, D.C. Law 8-229, title I, § 102(c), 38 DCR 246.)

Section references. — This section is referred to in §§ 6-734 and 6-735.

Legislative history of Law 8-229. — See note to § 6-731.

References in text. — The “Pollution Pre-

vention Act”, referred to in (b), is Pub. L. 101-508, § 6601 et seq., codified at 42 U.S.C. § 13101 et seq. Section 6607 of the Pollution Prevention Act, referred to in (b), is codified at 42 U.S.C. § 13106.

§ 6-734. Hazardous waste and toxic chemical source reduction plans.

(a) Pursuant to rules issued by the Mayor in accordance with § 6-738, beginning on January 1, 1992, and every 4 years thereafter, each business required to submit EPA Form R, and any additional data required, in accordance with § 6-733, including any District or federal government operations where applicable, shall submit a source reduction plan to the Mayor.

(b) Any source reduction plan submitted to the Mayor shall include the following:

(1) A statement of facility-wide management policy regarding hazardous waste and toxic chemical reduction;

(2) A statement of the scope and objectives of the plan, including the anticipated facility-wide reduction for each hazardous waste generated or toxic chemical used during the next 4 years;

(3) An identification of the type and amount of any hazardous waste generated or toxic chemical released into the environment; and

(4) A comprehensive economic and technical evaluation of appropriate technologies, procedures, and training programs to achieve hazardous waste and toxic chemical source reduction, including a schedule for and the estimated costs of implementation of the reduction. (Mar. 16, 1978, D.C. Law 2-64, § 20, as added Mar. 8, 1991, D.C. Law 8-229, title I, § 102(c), 38 DCR 246.)

Legislative history of Law 8-229. — See note to § 6-731.

§ 6-735. Establishment of a Hazardous Waste and Toxic Chemical Release Source Reduction Fund and fee.

(a) There is established within the District Treasury a nonlapsing revolving fund to be known as the Hazardous Waste and Toxic Chemical Source Reduction Fund (“Fund”). The Fund shall consist of any revenue collected pursuant to this subchapter and any funds paid to the District to assist in source reduction programs, including any grants received from EPA in accordance with § 6605 of the Pollution Prevention Act.

(b) Pursuant to rules issued by the Mayor in accordance with § 6-738, beginning on June 1, 1992, and annually thereafter, any business identified in § 6-732 that generates hazardous waste or releases a toxic chemical shall pay a fee to offset the actual operating and administrative costs of the implementation of the hazardous waste and toxic chemical source reduction program. The fee shall take into account the amount of the hazardous waste

generated or toxic chemical released, the size of the business, and consequent ability to pay.

(c) On or before December 31, 1993, the Mayor shall review the income received from the fee, the assessment structure mandated by subsection (b) of this section, and propose any necessary amendment to the rules or this subchapter. (Mar. 16, 1978, D.C. Law 2-64, § 21, as added Mar. 8, 1991, D.C. Law 8-229, title I, § 102(c), 38 DCR 246; Feb. 5, 1994, D.C. Law 10-68, § 15(b), 40 DCR 6311.)

Effect of amendments. — D.C. Law 10-68 corrected the substituted “assessment” for “assesment” in (c).

Legislative history of Law 8-229. — See note to § 6-731.

Legislative history of Law 10-68. — See note to § 6-702.

References in text. — The “Pollution Prevention Act”, referred to in the second sentence of (a), is Pub. L. 101-508, § 6601 et seq., codified at 42 U.S.C. § 13101 et seq. Section 6605 of the Pollution Act, referred to in (a), is codified as 42 U.S.C. § 13104.

§ 6-736. Hazardous waste and toxic chemical fee waivers.

(a) Pursuant to rules issued by the Mayor in accordance with § 6-738, any business may receive a waiver of the fee if the Mayor finds that the business has met the following conditions:

(1) Satisfied the requirements of this subchapter that pertain to the business;

(2) Performed and submitted a hazardous waste and toxic chemical source reduction audit to the Mayor; and

(3) Successfully implemented source reduction techniques so that the generation of hazardous waste or toxic chemical usage has been significantly reduced to levels identified in the technical literature for that standard industrial classification as representative of the best source reduction practice.

(b) Industrial classifications that engage in off-site recycling to reclaim the resource value of waste as the best management strategy for minimizing waste may substitute recycling for the source reduction techniques specified in subsection (a)(3) of this section. At no time shall incineration, with or without energy recovery, be regarded as source reduction or recycling for the purposes of this subchapter. (Mar. 16, 1978, D.C. Law 2-64, § 22, as added Mar. 8, 1991, D.C. Law 8-229, title I, § 102(c), 38 DCR 246.)

Legislative history of Law 8-229. — See note to § 6-731.

§ 6-737. Confidential business information.

No trade secret or commercial or financial information submitted by a business to the District government pursuant to the requirements of this subchapter shall be disclosed to the public, if the Mayor determines that the disclosure would result in a substantial harm to the competitive position of the business in accordance with § 1-1524(a)(1). (Mar. 16, 1978, D.C. Law 2-64, § 23, as added Mar. 8, 1991, D.C. Law 8-229, title I, § 102(c), 38 DCR 246.)

Section references. — This section is referred to in § 6-734.

Legislative history of Law 8-229. — See note to § 6-731.

§ 6-738. Rules.

(a) Within 180 days from March 8, 1991, the Mayor shall, pursuant to subchapter I of Chapter 15 of Title 1, issue rules to implement the provisions of this subchapter, including rules regarding the criteria for preparation of source reduction plans and the imposition of source reduction fees. The Mayor shall consult and give significant weight to the recommendations of the Litter and Solid Waste Reduction Commission in the issuance of rules to implement this subchapter.

(b) The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved. (Mar. 16, 1978, D.C. Law 2-64, § 24, as added Mar. 8, 1991, D.C. Law 8-229, title I, § 102(c), 38 DCR 246.)

Legislative history of Law 8-229. — See note to § 6-731.

CHAPTER 8. MANUFACTURE, RENOVATION, AND SALE OF MATTRESSES.

Sec.	Sec.
6-801. Definitions.	6-805. Violations of § 6-802, 6-804, or 6-807.
6-802. Unlawful acts.	6-806. Administration of chapter.
6-803. Label requirements.	6-807. Investigations.
6-804. Guaranty of manufacturer as defense; prosecution of manufacturer out- side District.	6-808. Seizure and destruction of mattresses.

§ 6-801. Definitions.

As used in this chapter:

(1) The term "mattress" includes any quilt, comfort, pad, pillow, cushion, or bag stuffed with hair, down, feathers, wool, cotton, excelsior, jute, or any other soft material and designed for use for sleeping or reclining purposes.

(2) The term "person" means individual, partnership, corporation, or association.

(3) The term "Mayor" means the Mayor of the District of Columbia. (July 3, 1926, 44 Stat. 838, ch. 768, § 1; 1973 Ed., § 6-601.)

Cross references. — As to licenses required in businesses relating to mattresses, see § 47-2818.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 6-802. Unlawful acts.

No person in the District of Columbia:

(1) Who is a manufacturer or renovator of, or dealer in, mattresses shall sell, exchange, give away, or offer or have in his possession for sale, exchange, or gift, any mattress which bears any false or misleading label, statement, design, or device, in respect of its material or processes of manufacture or renovation, or which is not labeled as provided in § 6-803;

(2) Who is a renovator of mattresses shall use in whole or in part, in the renovation of any mattress, material which has formed part of any mattress theretofore used in or about any sanitarium or hospital, or used by any individual having an infectious or contagious disease;

(3) Who is a manufacturer of mattresses shall use in whole or in part any second hand material in the manufacture of mattresses sold, exchanged, or given away, or to be offered for sale, exchange, or gift, as new mattresses;

(4) Shall knowingly sell, exchange, give away, or offer or have in his possession for sale, exchange, or gift:

(A) Any mattress which has been used, or is composed in whole or in part from material which has formed part of any mattress theretofore used in any sanitarium or hospital or by any individual having an infectious or contagious disease; or

(B) Any mattress which is composed in whole or in part of secondhand material which has not been thoroughly sterilized and disinfected by a process approved by the Director of the Department of Human Services of the District of Columbia;

(5) Who is a manufacturer or renovator of, or a dealer in, mattresses, shall remove, conceal, or deface, or cause or permit to be removed, concealed, or defaced, any label placed, in accordance with the provisions of this chapter, upon any mattress. (July 3, 1926, 44 Stat. 838, ch. 768, § 2; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; 1973 Ed., § 6-602.)

Section references. — This section is referred to in §§ 6-803 and 6-805.

§ 6-803. Label requirements.

The label required by § 6-802 shall consist of a tag which shall be sewed or otherwise securely attached to the mattress. In case the mattress has not been renovated the label shall contain in plain, legible print in the English language a statement showing: (1) The name and address of the manufacturer; (2) a description of the materials used in the manufacture of such mattress; and (3) whether such materials are in whole or in part secondhand. In case the mattress has been renovated the label shall contain in such print the word "Renovated" and a statement of: (1) The name and address of the renovator; and (2) a description of the materials used in the renovated mattress. For the purposes of this chapter the materials so used shall be described in such manner as the Council of the District of Columbia shall by regulation prescribe. (July 3, 1926, 44 Stat. 839, ch. 768, § 3; 1973 Ed., § 6-603.)

Cross references. — As to authority of Council to make health and safety regulations, see § 1-319.

Section references. — This section is referred to in § 6-802.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(142) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 6-804. Guaranty of manufacturer as defense; prosecution of manufacturer outside District.

No dealer shall be prosecuted under the provisions of this chapter when he can establish a guaranty signed by the manufacturer residing in the United States from whom he purchases mattresses to the effect that the statements contained on the labels attached to such mattresses are true. Such guaranty, to afford protection, shall contain the name and address of the manufacturer making the sale of such mattresses to the dealer, and in such case the manufacturer shall be amenable to the prosecutions, fines, and other penalties which would attach, in due course, to the dealer under the provisions of this chapter. In case the manufacturer resides outside the District of Columbia it shall be the duty of each United States Attorney to whom the Director of the Department of Human Services of the District of Columbia shall report the violation to cause appropriate proceedings to be commenced and prosecuted against the manufacturer without delay in the proper courts of the United States. (July 3, 1926, 44 Stat. 839, ch. 768, § 4; June 25, 1948, 62 Stat. 909, ch. 646, § 1; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; 1973 Ed., § 6-604.)

Section references. — This section is referred to in § 6-805.

§ 6-805. Violations of § 6-802, 6-804, or 6-807.

Any person violating any provision of § 6-802 or § 6-807 shall, upon conviction thereof, be punished by a fine of not more than \$500, or by imprisonment for not more than 6 months, or both. All prosecutions under this chapter, except as provided in § 6-804, shall be in the Superior Court of the District of Columbia upon information by the Corporation Counsel or 1 of his assistants. Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of § 6-802 or § 6-807, or any rules or regulations issued under the authority of these sections, pursuant to subchapters I through III of Chapter 27 of this title. Adjudication of any infraction of these sections shall be pursuant to subchapters I through III of Chapter 27 of this title. (July 3, 1926, 44 Stat. 839, ch. 768, § 5; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 6-605; Oct. 5, 1985, D.C. Law 6-42, § 459, 32 DCR 4450.)

Section references. — This section is referred to in § 6-806.

Legislative history of Law 6-42. — See note to § 6-2701.

§ 6-806. Administration of chapter.

Except as provided in § 6-805, the administration of this chapter shall be in charge of the Director of the Department of Human Services of the District of Columbia under the supervision of the Mayor. The Mayor is authorized to make such regulations as may be necessary for the efficient administration of

this chapter. (July 3, 1926, 44 Stat. 839, ch. 768, § 6; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; 1973 Ed., § 6-606.)

Cross references. — As to authority of Council to make health and safety regulations, see § 1-319.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 6-807. Investigations.

It shall be the duty of the Director of the Department of Human Services of the District of Columbia, whenever he has reason to believe that any provision of this chapter is being or has been violated, to cause an investigation to be made. For the purpose of such investigation the Director of the Department of Human Services, or any of his assistants designated by him in writing, shall have authority at all times during the ordinary business hours to enter any building or other place in the District of Columbia where mattresses are manufactured, renovated, or held for sale, exchange, or gift, or delivery in pursuance thereof. No person shall refuse or obstruct such inspection. Evidence obtained by the Director of the Department of Human Services or his assistants of any violations of this chapter shall be furnished the Corporation Counsel. (July 3, 1926, 44 Stat. 839, ch. 768, § 7; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; 1973 Ed., § 6-607.)

Section references. — This section is referred to in § 6-805.

§ 6-808. Seizure and destruction of mattresses.

If on inspection the Director of the Department of Human Services or his assistants find in the District of Columbia any mattress held for sale, exchange, or gift, or delivery in pursuance thereof, which has been used or is composed in whole or in part of materials which have formed part of any mattress used in or about any sanitarium or hospital or by any individual having an infectious or contagious disease, or is composed in whole or in part of secondhand material which has not been thoroughly sterilized and disinfected by a process approved by the Director of the Department of Human Services, or if the Director of the Department of Human Services or his assistants find in the District of Columbia any such materials held for use in the manufacture or renovation of any mattress, the Director of the Department of Human Services shall, after first making and filing in the public records of his office a written order stating the reason therefor, thereupon without further notice cause such mattress or material intended to be used in the

manufacture of any mattress to be seized, removed, and destroyed by summary action. (July 3, 1926, 44 Stat. 839, ch. 768, § 8; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; 1973 Ed., § 6-608.)

HEALTH AND SAFETY

CHAPTER 9. ENVIRONMENTAL CONTROLS.

Subchapter I. Air Pollution Control.

Sec.

6-901 to 6-903. [Repealed].

6-904. Testing of Solid Waste Reduction Center Number 1 for compliance with certain emission standards; submission of test results and reports to Council.

6-905. Comprehensive air pollution control program.

6-906. Rules.

Subchapter II. Restriction on Smoking.

6-911. Findings and purpose.

6-912. Definitions.

6-913. Smoking restrictions.

6-913.1. Designated nonsmoking areas in restaurants; new construction and major renovation to existing restaurants; smoking areas.

6-913.2. Regulation of smoking in any District of Columbia workplace.

6-913.3. Prohibition of employment discrimination on the basis of tobacco use.

6-914. "No Smoking" signs.

6-915. Enforcement.

6-916. Penalties.

6-917. Severability.

6-918. Exceptions.

6-919. Tobacco smoking education and smoking cessation programs.

6-920. Smoking prohibitions pursuant to existing law.

6-920.1. Distribution of free cigarettes prohibited; penalty.

Subchapter III. Water Pollution Control.

6-921. Definitions.

6-922. Discharge of pollutants prohibited; exception.

6-923. Protection of aquatic life.

6-924. Classification of beneficial uses of waters.

6-925. Monitoring for compliance with subchapter.

6-926. Certain discharges permitted; terms of permit; additional enforcement procedures; effect of federal permit; public hearing on permit; special requirements for treatment facilities; permits for industrial discharges; certain discharges from watercraft prohibited.

6-927. Location of discharge; recognition of reduction of pollutants; restrictions on quantity of materials discharged; discharge of used motor oil to sewer prohibited.

6-928. Discharge of pollutant from vessel or

Sec.

onshore or offshore facility; removal of these pollutants; contingency plan for environmental emergencies.

6-929. Accounting for revenues and expenses of pollutant removal; available funds for future years; District of Columbia Revolving Water Pollution Control Fund.

6-930. Spill prevention and cleanup plan for onshore or offshore facility; discharge from underground facility; testing of underground tanks for leaks.

6-931. Water quality management plan.

6-932. Mayor authorized to issue research grants.

6-933. Mayor authorized to regulate construction.

6-934. Use of sludge from treatment facilities.

6-935. Subpoena and inspection powers of Mayor.

6-936. Penalties.

6-937. Enforcement of subchapter.

6-938. Civil actions.

6-939. Private rights of action permitted; prior notice to Mayor; regulations and investigations concerning reported violations.

6-940. Rules.

Subchapter IV. Wastewater Control.

6-951. Purpose.

6-952. Definitions.

6-953. Separate agreements.

6-954. Falsifying information.

6-955. Tampering and misuse.

6-956. Regulation.

6-957. Administration.

6-958. Inspection authority.

6-959. Confidential information.

6-960. Enforcement — Appeals.

6-961. Injunction.

6-962. Emergency suspension of service.

6-963. Annual publication.

6-964. Penalties.

Subchapter V. Restrictions on Phosphate Cleaners.

6-971. Definitions.

6-972. Sale and use of phosphate cleaners prohibited; exceptions; manufacturer's package statement; testing of products for compliance; exemptions for use of noncomplying cleaners; rules and regulations; annual report by Mayor.

6-973. Seller's burden in civil action.

Sec.
6-974. Criminal prosecutions; penalties for violations of subchapter.

Subchapter VI. Environmental Impact Statements.

6-981. Purpose.
6-982. Definitions.
6-983. Environmental Impact Statement requirements.
6-984. Adverse impact findings.
6-985. Supplemental EIS.
6-986. Exemptions.
6-987. Lead agencies; files.
6-988. Judicial review.
6-989. Rules.
6-990. Construction.

Subchapter VII. Asbestos Licensing and Control.

6-991.1. Definitions.
6-991.2. Asbestos worker license.
6-991.3. Business entity license and permit.
6-991.4. Prohibitions.
6-991.5. Inspection and investigation.
6-991.6. Reprimands; suspensions; revocations.
6-991.7. Summary action.

Sec.
6-991.8. Cease and desist order.
6-991.9. Criminal action.
6-991.10. Civil infractions.
6-991.11. Records to be kept by a business entity.
6-991.12. Mayor's responsibilities.
6-991.13. Rules.
6-991.14. Remedies cumulative.

Subchapter VIII. Underground Storage Tank Management.

6-995.1. Definitions.
6-995.2. Notification.
6-995.3. Release notification requirements.
6-995.4. Interim prohibition for installation.
6-995.5. Underground Storage Tank Trust Fund.
6-995.6. Certification, registration, and licensing.
6-995.7. Denial, suspension, or revocation.
6-995.8. Right of entry; inspections; analyses; corrective action.
6-995.9. Enforcement; penalties.
6-995.10. Summary action.
6-995.11. Citizen's right of action.
6-995.12. Rules.

Subchapter I. Air Pollution Control.

§§ 6-901 to 6-903. Purpose; emission and air control standards; air pollution control program; administration of subchapter.

Repealed. Mar. 15, 1985, D.C. Law 5-165, § 2(a), 32 DCR 562.

Legislative history of Law 5-165. — See note to § 6-904.

§ 6-904. Testing of Solid Waste Reduction Center Number 1 for compliance with certain emission standards; submission of test results and reports to Council.

(a) The Mayor of the District of Columbia shall conduct tests as necessary at least once a year to determine the compliance of Solid Waste Reduction Center Number 1 with the emission standards for incinerators established by the District of Columbia and by the United States Environmental Protection Agency. These tests shall also include determinations of emissions of such other pollutants as may be useful or necessary in the management of the environment in the District of Columbia.

(b) More frequent tests shall be conducted as may be necessary to ensure the operation of Solid Waste Reduction Center Number 1 in compliance with

District of Columbia and federal emission standards for incinerators. The need for more frequent tests shall be determined by such factors as visible emission characteristics and operating and maintenance parameters.

(c) The Mayor of the District of Columbia shall promptly submit the results of all tests performed pursuant to this section to the Council of the District of Columbia.

(d) Beginning 3 months after March 15, 1985, and every 6 months thereafter, the Mayor of the District of Columbia shall submit to the Council of the District of Columbia a report regarding Solid Waste Reduction Center Number 1. Each report shall describe, as applicable, but need not be limited to, the following subjects:

- (1) The status of any construction or repairs;
- (2) Any changes in operational or maintenance procedures instituted since the last report to the Council of the District of Columbia and the effect of the changes on emissions from the facility;
- (3) Visible emissions from the facility; and
- (4) Anticipated additional funding requirements, if any, to achieve and maintain operation of the facility in compliance with applicable emission limitations. (Mar. 15, 1985, D.C. Law 5-165, § 4, 32 DCMR 562.)

Cross references. — As to Litter and Solid Waste Reduction Commission, see Chapter 32 of Title 2.

Legislative history of Law 5-165. — Law 5-165, the “District of Columbia Air Pollution Control Act of 1984”, was introduced in Council and assigned Bill No. 5-168, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on December 4, 1984, and December 18, 1984, respectively. Signed by the Mayor on January 11, 1985, it was assigned Act No. 5-230 and transmitted to both Houses of Congress for its review.

Air quality control regulations. — D.C. Law 5-165, § 3, the “District of Columbia Air Pollution Control Act of 1984”, enacted the air quality control regulations of the District of Columbia as Title 20 of the District of Columbia Municipal Regulations (20 DCMR Chapters 1-9).

Delegation of Authority Under D.C. Law 5-165, the District of Columbia Air Pollution Control Act of 1984. — See Mayor’s Order 93-12, February 16, 1993.

§ 6-905. Comprehensive air pollution control program.

(a) The Mayor of the District of Columbia shall prepare a comprehensive program for the control and prevention of air pollution in the District of Columbia. This program shall provide for the administration and enforcement by the Mayor of the District of Columbia of the rules stated in 20 DCMR. As part of the program, the Mayor of the District of Columbia:

- (1) Shall conduct research, investigations, experiments, training demonstrations, surveys, and studies, relating to the causes, effects, extent, prevention, and control of air pollution in the District of Columbia;
- (2) Shall collect and make available, through publication, educational and training programs, and other appropriate means, the results of, and other information pertaining to, the activities carried out under paragraph (1) of this subsection; and
- (3) May advise, cooperate, and enter into agreements with the governments and agencies of any state or political subdivision adjacent to the District

of Columbia and any interstate or other regional agency representing these states or political subdivisions to perform the following:

(A) Establish cooperative effort and mutual assistance for the prevention and control of air pollution and the enforcement of their respective air pollution laws; and

(B) Establish any agency as may be necessary to carry out these agreements.

(b) For the purpose of carrying out the mayoral duties under this section, the Mayor of the District of Columbia may:

(1) Delegate the performance of the duties to an agency of the government of the District of Columbia, designated or established by the Mayor of the District of Columbia;

(2) Hold hearings relating to the administration of this section;

(3) Secure necessary scientific, technical, administrative, and operational services, including laboratory facilities, by contract, or otherwise;

(4) Receive and administer grants or gifts made for the purpose of carrying out the purposes of this section; and

(5) Take any other action which may be necessary to carry out the mayoral duties listed in this section. (Mar. 15, 1985, D.C. Law 5-165, § 5, 32 DCR 562.)

Section references. — This section is referred to in § 47-2739.

Legislative history of Law 5-165. — See note to § 6-904.

Air Quality Control Regulations amended. — Section 485 of D.C. Law 6-42 amended §§ 100.4 and 105.1 of the Air Quality Control Regulations, effective March 15, 1985, (D.C. Law 5-165; 20 DCMR Chapters 1 through 9) to provide for adjudication of infractions

pursuant to Chapter 27 of Title 6. Section 501(b) of D.C. Law 6-42 provided that the provisions of the act shall apply only to infractions which occur or are discovered by inspection after October 5, 1985.

Section 2(v) of D.C. Law 8-237 amended § 485 of D.C. Law 6-42, effective March 8, 1991, to insert subsections 105.2 and 3013.4 regarding the imposition of civil fines, penalties, and fees as alternative sanctions.

§ 6-906. Rules.

The Mayor of the District of Columbia may issue rules to implement the provisions of this act pursuant to subchapter I of Chapter 15 of Title 1. Until December 31, 1993, the Mayor may issue or amend any rules, as needed to comply with the requirements of federal law and regulations, in implementing the District's comprehensive air pollution control program. (Mar. 15, 1985, D.C. Law 5-165, § 6, 32 DCR 562; Mar. 27, 1993, D.C. Law 9-262, § 3, 40 DCR 1032; Apr. 26, 1994, D.C. Law 10-106, § 5, 41 DCR 1014.)

Effect of amendments. — D.C. Law 10-106 added the second sentence.

Temporary amendments of section. — Section 3 of D.C. Law 9-262 rewrote the section.

Section 4(b) of D.C. Law 9-262 provided that the act shall expire on the 225th day of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 3 of the Air Pollution Control Act of 1984 National Ambient Air Quality Standards Attainment Emergency

Amendment Act of 1992 (D.C. Act 9-390, January 6, 1993, 40 DCR 683).

Legislative history of Law 5-165. — See note to § 6-904.

Legislative history of Law 9-262. — Law 9-262, the "Air Pollution Control Act of 1984 National Ambient Air Quality Standards Attainment Temporary Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-718. The Bill was adopted on first and second readings on December 15, 1992, and

January 5, 1993, respectively. Signed by the Mayor on January 26, 1993, it was assigned Act No. 9-410 and transmitted to both Houses of Congress for its review. D.C. Law 9-262 became effective on March 27, 1993.

Legislative history of Law 10-106. — Law 10-106, the “Motor Vehicle Biennial Inspection Amendment Act of 1993,” was introduced in Council and assigned Bill No. 10-6, which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on January 4, 1994, and February 1, 1994, respectively. Signed by the Mayor on February 18, 1994, it was assigned

Act No. 10-194 and transmitted to both Houses of Congress for its review. D.C. Law 10-106 became effective on April 26, 1994.

References in text. — “This act,” referred to near the middle of the first sentence of this section, is D.C. Law 5-165.

Application of Law 10-106. — Section 6(b) of D.C. Law 10-106 provided that § 5 of the act shall apply as of September 30, 1993.

Delegation of authority pursuant to D.C. Law 5-165, District of Columbia Air Pollution Control Act of 1984. — See Mayor’s Order 88-62, March 15, 1988.

Subchapter II. Restriction on Smoking.

§ 6-911. Findings and purpose.

(a) The Council of the District of Columbia finds that the inhalation of concentrated smoke resulting from the smoking of tobacco in facilities in which the public congregates is a clear danger to health and a cause of inconvenience and discomfort to persons present in such facilities.

(b) The purpose of this subchapter is to protect the public health, comfort, and environment by prohibiting smoking in certain facilities, vehicles, and restaurants open to or used by the general public.

(c) Except to the extent that § 8 of D.C. Law 3-22 modifies the Fire Prevention Code approved pursuant to the Construction Codes Approval and Amendments Act of 1986, this subchapter is intended to complement the provisions of Part 2 of those regulations and the provisions of §§ 44-223 to 44-226, which regulate public conduct on public passenger vehicles. It is not the intent of this subchapter to derogate in any manner from the provisions of the Fire Prevention Code approved pursuant to the Construction Codes Approval and Amendments Act of 1986 or from § 44-223(b)(1). (1973 Ed., § 6-821; Sept. 28, 1979, D.C. Law 3-22, § 2, 26 DCR 390; Mar. 21, 1987, D.C. Law 6-216, § 13(g), 34 DCR 1072; Mar. 29, 1988, D.C. Law 7-100, § 2(a), 35 DCR 1182.)

Legislative history of Law 3-22. — Law 3-22, the “District of Columbia Smoking Restriction Act of 1979,” was introduced in Council and assigned Bill No. 3-109, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on May 22, 1979 and June 19, 1979, respectively. Signed by the Mayor on July 12, 1979, it was assigned Act No. 3-66 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-216. — Law 6-216, the “Construction Codes Approval and Amendments Act of 1986,” was introduced in Council and assigned Bill No. 6-500, which was referred to the Committee of the Whole. The

Bill was adopted on first and second readings on November 18, 1986 and December 16, 1986, respectively. Signed by the Mayor on February 2, 1987, it was assigned Act No. 6-279 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-100. — See note to § 6-913.1.

References in text. — The “Construction Codes Approval and Amendments Act of 1986,” referred to in two places in subsection (c), is D.C. Law 6-216.

Delegation of authority under D.C. Law 3-22, the District of Columbia Smoking Restriction Act of 1979. — See Mayor’s Order 90-192, December 13, 1990.

§ 6-912. Definitions.

For the purpose of this subchapter:

(1) "Educational facility" means any enclosed indoor area used primarily as a library or for instruction of enrolled students, including day care centers, nursery schools, elementary schools, and secondary schools, except smoking lounges or specific smoking areas approved by the principal or president of the school, college, or university pursuant to guidelines established by the Board of Education, in the case of a public school, or by the trustees or other governing body, in the case of a college, university, or private educational institution. The term "educational facility" shall include all enclosed indoor areas supportive of instruction, including, but not limited to, classrooms, cafeterias, study areas and libraries, but excluding faculty lounges and specific areas approved by the principal of a given school pursuant to guidelines established by the Superintendent of Schools or the head of such private institutions.

(2) "Health care facility" means any institution providing individual care or treatment of diseases or other medical, physiological, or psychological conditions, including, but not limited to, hospitals, clinics, laboratories, nursing homes or homes for the aged or chronically ill, but excluding private medical offices.

(3) "Mayor" means the Mayor of the District of Columbia or his designated agent.

(4) "Person" means any individual, firm, partnership, association, corporation, company or organization of any kind, including a government agency to which the health and safety laws of the District of Columbia may be applied.

(5) "Restaurant" means a restaurant as defined in § 25-103(14), and any other establishments licensed by the District of Columbia in the business of preparing or serving food to the public. The term "restaurant" shall include coffee shops, cafeterias, luncheonettes, eateries, and soda fountains. The term "restaurant" shall not include sidewalks, terraces, or space used by restaurants to provide outdoor facilities, nightclubs, or taverns.

(6) "Retail store" means any establishment whose primary purpose is to sell or offer for sale to consumers, not for resale, any goods, wares, merchandise or food for consumption off the premises, and all activities, operations and services connected therewith or incidental thereto. The term "retail store" shall not include separate areas of a retail store which are used as a restaurant.

(7) "Smoking" or "to smoke" means the act of puffing, having in one's possession, holding or carrying a lighted or smoldering cigar, cigarette, pipe or smoking equipment of any kind or lighting a cigar, cigarette, pipe or smoking equipment of any kind. (1973 Ed., § 6-822; Sept. 28, 1979, D.C. Law 3-22, § 3, 26 DCR 390; Mar. 29, 1988, D.C. Law 7-100, § 2(b), 35 DCR 1182.)

Section references. — This section is referred to in § 6-913.

Legislative history of Law 3-22. — See note to § 6-911.

Legislative history of Law 7-100. — See note to § 6-913.1.

Delegation of authority under D.C. Law 3-22, the District of Columbia Smoking Restriction Act of 1979. — See Mayor's Order 90-192, December 13, 1990.

§ 6-913. Smoking restrictions.

Smoking shall be prohibited in the following:

- (1) Any elevator, except in a single-family dwelling;
- (2) Any public selling area of a retail store, except in a tobacco shop or store primarily concerned with selling tobacco and smoking equipment;
- (3) Any public assembly or hearing room which is owned or leased by any branch, agency, or instrumentality of the District of Columbia government; this subsection shall not apply to the District of Columbia National Guard Armory or to the Robert F. Kennedy Memorial Stadium;
- (4) Any educational facility except as provided in § 6-912(1);
- (5) While transporting passengers within the corporate limits of the District of Columbia, any passenger vehicle owned or operated by the District of Columbia government, or any passenger vehicle for hire regulated under § 47-2829, except that smoking with the prior consent of all occupants of the vehicle shall be permitted when the vehicle is a limousine;
- (6) Any area of a health care facility frequented by the general public, including hallways, waiting rooms and lobbies. The operator of a health care facility may designate separate areas as smoking areas.
 - (A) When a health care facility permits patients to smoke in bed space areas, such facility shall make a reasonable effort to determine a patient's individual nonsmoking or smoking preference and assign patients who are to be placed in bed space areas utilized by 2 or more patients to a bed space area with patients who have a similar smoking preference.
 - (B) Hospital staff, visitors and the general public shall not smoke in bed space areas utilized by nonsmoking patients. "No Smoking" signs shall be conspicuously posted in such bed space areas.

(7) Any restaurant except as permitted in § 6-913.1.

(8) Any public or private workplace, except as provided in § 6-913.2. (1973 Ed., § 6-823; Sept. 28, 1979, D.C. Law 3-22, § 4, 26 DCR 390; Mar. 29, 1988, D.C. Law 7-100, § 2(c), 35 DCR 1182; May 2, 1991, D.C. Law 8-262, § 2(a), 37 DCR 8434.)

Legislative history of Law 3-22. — See note to § 6-911.

Legislative history of Law 7-100. — See note to § 6-913.1.

Legislative history of Law 8-262. — See note to § 6-913.2.

Delegation of authority under D.C. Law 3-22, the District of Columbia Smoking Restriction Act of 1979. — See Mayor's Order 90-192, December 13, 1990.

§ 6-913.1. Designated nonsmoking areas in restaurants; new construction and major renovation to existing restaurants; smoking areas.

(a) Except as provided in subsection (b) of this section, the owner, manager, or person in charge of any restaurant having a seating capacity of 50 or more shall designate at least 25% of the total seating capacity as a nonsmoking area. Bar and lounge seating in the restaurant is excluded from this total seating

capacity calculation. Smoking shall be prohibited in these nonsmoking areas even if, after a certain hour, food is no longer served.

(b) Any new construction for the purpose of establishing a restaurant or major renovation, performed on or after March 29, 1988, to an existing restaurant, which has a seating capacity of 50 or more, shall contain a nonsmoking area that is at least 50% of the total seating capacity. Bar and lounge seating in the restaurant is excluded from this total seating capacity calculation. Smoking shall be prohibited in these nonsmoking areas even if, after a certain hour, food is no longer served. In accordance with § 6-915 (c), the Mayor shall define the term "major renovation".

(c)(1) In areas where smoking is permitted pursuant to any provision of this subchapter, physical barriers or separate rooms may be used to the greatest extent possible to minimize the smoke in adjacent nonsmoking areas. Ventilation shall be in compliance with the District of Columbia laws and rules governing indoor ventilation.

(2) No area shall be designated as a smoking area where smoking is prohibited by the Fire Marshal or by other District of Columbia laws or rules.

(3) Smoking areas shall comply with all laws and rules of the District of Columbia. (Sept. 28, 1979, D.C. Law 3-22, § 4a, as added Mar. 29, 1988, D.C. Law 7-100, § 2(d), 35 DCR 1182.)

Section references. — This section is referred to in § 6-913.

Legislative history of Law 7-100. — Law 7-100, the "District of Columbia Smoking Restriction Act of 1979 Amendment Act of 1987," was introduced in Council and assigned Bill No. 7-218, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on January 5, 1988 and

January 19, 1988, respectively. Signed by the Mayor on February 11, 1988, it was assigned Act No. 7-144 and transmitted to both Houses of Congress for its review.

Delegation of authority under D.C. Law 3-22, the District of Columbia Smoking Restriction Act of 1979. — See Mayor's Order 90-192, December 13, 1990.

§ 6-913.2. Regulation of smoking in any District of Columbia workplace.

(a) Any private or public employer in the District of Columbia ("District") shall, within 3 months of May 2, 1991, adopt, implement, and maintain a written smoking policy that contains the following provisions:

(1) Designation of an area in the workplace where smoking may be permitted. In an area where smoking is permitted, a physical barrier or a separate room shall be used to minimize smoke in any nonsmoking area. Ventilation shall be in compliance with the District laws and rules that govern indoor ventilation.

(2) Notification to employees orally and in writing by conspicuously posting the employer's smoking policy within 3 weeks after the smoking policy is adopted. Any person in the workplace shall be subject to the posted smoking policy of the employer.

(b) The designation of a smoking area in the workplace affects employment relations and shall be a subject of collective bargaining in accordance with § 1-618.8(b).

(c) Nothing in the Smoking Regulation Amendment Act of 1990 shall be construed to prevent the owner or person in charge of a building or any part of a building from prohibiting smoking throughout the building or in any part of the building over which she or he has control. (Sept. 28, 1979, D.C. Law 3-22, § 4b, as added May 2, 1991, D.C. Law 8-262, § 2(b), 37 DCR 8434.)

Section references. — This section is referred to in § 6-913.

Legislative history of Law 8-262. — Law 8-262, the “Smoking Regulation Amendment Act of 1990,” was introduced in Council and assigned Bill No. 8-581, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on Novem-

ber 20, 1990, and December 4, 1990, respectively. Signed by the Mayor on December 14, 1990, it was assigned Act No. 8-278 and transmitted to both Houses of Congress for its review.

References in text. — The “Smoking Regulation Amendment Act of 1990”, referred to in (c), is D.C. Law 8-262.

§ 6-913.3. Prohibition of employment discrimination on the basis of tobacco use.

(a) No person shall refuse to hire or employ any applicant for employment, or discharge or otherwise discriminate against any employee with respect to compensation or any other term, condition, or privilege of employment, on the basis of the use by the applicant or employee of tobacco or tobacco products. Nothing in this section shall be construed as limiting a person from establishing or enforcing workplace smoking restrictions that are required or permitted by this subchapter or other District or federal laws, or in establishing tobacco-use restrictions or prohibitions that constitute bona fide occupational qualifications.

(b) Any employee or applicant for employment who is aggrieved by a violation of subsection (a) of this section shall have a private cause of action against the person. An employee or applicant for employment shall pursue and exhaust all remedies available pursuant to any collective bargaining agreement, grievance procedure, or other established means of resolving employer-employee disputes, to resolve a violation of subsection (a) of this section, prior to commencing a civil action.

(c) Any employee or applicant for employment who is aggrieved by a violation of subsection (a) of this section shall be entitled to recover any damages, including lost or back wages or salary. The court, in its discretion, may allow the prevailing party a reasonable attorney’s fee as part of the costs. (Sept. 28, 1979, D.C. Law 3-22, § 4(b), as added Mar. 17, 1993, D.C. Law 9-240, § 2, 40 DCR 627.)

Effect of amendments. — D.C. Law 9-240 added this section.

Legislative history of Law 9-240. — Law 9-240, the “Prohibition of Employment Discrimination on the Basis of Tobacco Use Amendment Act of 1992,” was introduced in Council and assigned Bill No. 9-504, which was referred to the Committee on Public Works.

The Bill was adopted on first and second readings on December 1, 1992, and December 15, 1992, respectively. Signed by the Mayor on January 5, 1993, it was assigned Act No. 9-374 and transmitted to both Houses of Congress for its review. D.C. Law 9-240 became effective on March 17, 1993.

§ 6-914. “No Smoking” signs.

(a) In any place, elevator, or vehicle in which smoking is prohibited, the owner, manager, or person in charge of the place, elevator, or vehicle shall post or cause to be posted signs that read, “No Smoking Under Penalty of Law”, “No Smoking Except in Smoking Areas”, or “Smoking in Accordance With Employer’s Smoking Policy Only”. In any place, elevator, or vehicle where smoking is restricted, the sign shall include the following warning: “Smoking causes lung cancer, heart disease, emphysema, and may cause fetal injury, premature birth, and low birth weight in pregnant women.” Signs posted shall clearly state the maximum fine for a violation of this subchapter. Signs shall be visible to the public at the entrance to the area and on the interior of the area in sufficient number in a manner that gives notice to the public of the applicable law.

(b) Where smoking is prohibited pursuant to this subchapter all signs posted shall include the internationally recognized no smoking symbol. Where smoking is restricted pursuant to this subchapter all signs posted shall include the internationally recognized smoking symbol.

(c) It shall be unlawful for any person to obscure, remove, deface, mutilate, or destroy any sign posted in accordance with the provisions of this subchapter. (1973 Ed., § 6-824; Sept. 28, 1979, D.C. Law 3-22, § 5, 26 DCR 390; Mar. 29, 1988, D.C. Law 7-100, § 2(e), 35 DCR 1182; May 2, 1991, D.C. Law 8-262, § 2(c), 37 DCR 8434; Mar. 17, 1993, D.C. Law 9-223, § 2, 40 DCR 590.)

Section references. — This section is referred to in § 6-916.

Legislative history of Law 3-22. — See note to § 6-911.

Legislative history of Law 7-100. — See note to § 6-913.1.

Legislative history of Law 8-262. — See note to § 6-913.2.

Legislative history of Law 9-223. — Law 9-223, the “Smoking Regulation Amendment Act of 1992,” was introduced in Council and assigned Bill No. 9-496, which was referred to

the Committee on Public Works. The Bill was adopted on first and second readings on December 1, 1992, and December 15, 1992, respectively. Signed by the Mayor on December 31, 1992, it was assigned Act No. 9-354 and transmitted to both Houses of Congress for its review. D.C. Law 9-223 became effective on March 17, 1993.

Delegation of authority under D.C. Law 3-22, the District of Columbia Smoking Restriction Act of 1979. — See Mayor’s Order 90-192, December 13, 1990.

§ 6-915. Enforcement.

(a) The owner, lessee, manager, operator or other person in charge of a facility or vehicle where smoking is prohibited pursuant to this chapter shall:

- (1) Post and maintain the appropriate “No Smoking” signs; and
- (2) Ask persons observed smoking in violation of this subchapter to refrain from smoking.

(b) Whenever the owner, lessee, manager or operator of a facility covered by this subchapter requires a license issued by the District of Columbia government in order to operate the facility, the owner, lessee, manager or operator shall comply with this subchapter as a requirement for receiving or renewing the license. Where an on-site inspection is required prior to issuance or renewal of a license, the inspector should certify that the appropriate signs have been posted. In those cases where an on-site inspection is not needed, a

signed statement by the applicant that he has complied with this subchapter shall constitute sufficient evidence of compliance as required in this subsection. Violation of this subchapter shall be grounds for license suspension or revocation.

(c) The Mayor is authorized to promulgate any regulations needed to carry out the provisions of this subchapter.

(d) An aggrieved person or class of persons may bring an action in the Superior Court of the District of Columbia for injunctive relief to prevent any owner, lessee, manager, operator or person otherwise in charge of a facility or vehicle where smoking is prohibited pursuant to this subchapter from violating, or continuing to violate, any provision of this subchapter. For the purposes of this subsection, an "aggrieved person" shall be defined as any person subjected to tobacco smoke due to failure to comply with this subchapter. (1973 Ed., § 6-825; Sept. 28, 1979, D.C. Law 3-22, § 6, 26 DCR 390; Mar. 29, 1988, D.C. Law 7-100, § 2(f), 35 DCR 1182.)

Section references. — This section is referred to in § 6-913.1.

Legislative history of Law 3-22. — See note to § 6-911.

Legislative history of Law 7-100. — See note to § 6-913.1.

Delegation of authority under D.C. Law 3-22, the District of Columbia Smoking Restriction Act of 1979. — See Mayor's Order 90-192, December 13, 1990.

§ 6-916. Penalties.

(a) Any person who violates any provision of this subchapter, other than § 8 of D.C. Law 3-22, by:

(1) Smoking in a posted "No Smoking" area or defacing or removing a "No Smoking" sign, or failing to post warning signs as set forth in § 6-914(a) shall, upon conviction, be punishable by a fine of not less than \$10 nor more than \$50 for a 1st offense; and not less than \$50 nor more than \$100 for each 2nd or subsequent offense; or

(2) Obscuring, removing, defacing, mutilating or destroying any sign posted in accordance with the provisions of this subchapter shall, upon conviction, be punishable by a fine of not more than \$300; or

(3) Failing to post or cause to be posted or to maintain "No Smoking" signs and by failing to warn a smoker observed to be smoking in violation of this subchapter to stop smoking, as required by this subchapter, shall, upon conviction, be punishable by a fine of not more than \$300. Each and every day that the violation continues shall constitute a separate offense, and the penalties provided for in this paragraph shall be applicable to each separate offense: Provided, that such penalties shall not be levied against any employee or officer of any branch, agency or instrumentality of the District of Columbia government.

(b) The Mayor is authorized to establish procedures for the issuance of a citation to any person who violates this subchapter requiring the person to post collateral in accordance with § 16-704 to assure the person's appearance in the Superior Court of the District of Columbia to answer the citation, and such collateral may be forfeited in lieu of an appearance as the Court may direct.

(c) Issuances of citations pursuant to subsection (b) of this section shall not constitute arrests nor shall forfeitures of collateral pursuant to said subsection constitute convictions. Records which may be maintained in connection with the implementation of this section shall not constitute records of arrest under § 4-132, relating to arrest records, or paragraph (4) of § 4-131.

(d) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this subchapter, or any rules or regulations issued under the authority of this subchapter, pursuant to § 6-2701 et seq. Adjudication of any infraction of this subchapter shall be pursuant to § 6-2701 et seq. (1973 Ed., § 6-826; Sept. 28, 1979, D.C. Law 3-22, § 7, 26 DCR 390; Oct. 5, 1985, D.C. Law 6-42, § 411, 32 DCR 4450; Mar. 29, 1988, D.C. Law 7-100, § 2(g), 35 DCR 1182; May 2, 1991, D.C. Law 8-262, § 2(d), 37 DCR 8434.)

Legislative history of Law 3-22. — See note to § 6-911.

Legislative history of Law 6-42. — Law 6-42, the "Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985," was introduced in Council and assigned Bill No. 6-187, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 25, 1985, and July 9, 1985, respectively. Signed by the Mayor on July 16, 1985, it was assigned Act No. 6-60 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-100. — See note to § 6-913.1.

Legislative history of Law 8-262. — See note to § 6-913.2.

Delegation of authority under D.C. Law 3-22, the District of Columbia Smoking Restriction Act of 1979. — See Mayor's Order 90-192, December 13, 1990.

Editor's notes. — Section 8 of D.C. Law 3-22 amended Title 7 of the District of Columbia Rules and Regulations.

§ 6-917. Severability.

If any provision of this subchapter, or its application to a particular person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this subchapter. (1973 Ed., § 6-827; Sept. 28, 1979, D.C. Law 3-22, § 9, 26 DCR 390.)

Legislative history of Law 3-22. — See note to § 6-911.

Delegation of authority under D.C. Law

3-22, the District of Columbia Smoking Restriction Act of 1979. — See Mayor's Order 90-192, December 13, 1990.

§ 6-918. Exceptions.

This subchapter shall not prohibit smoking in the following areas:

- (1) An area where smoking is permitted by any provision of this subchapter;
 - (2) A tobacco shop or store primarily concerned with selling tobacco and smoking equipment;
 - (3) Upon the stage by performers during the course of any theatrical performance if smoking is part of the theatrical production;
 - (4) A tavern or nightclub as defined in § 25-103(17) and (23), respectively;
- or

(5) A room or hall that is used for private social functions, which includes weddings, banquets, and parties. (Sept. 28, 1979, D.C. Law 3-22, § 10, as added Mar. 29, 1988, D.C. Law 7-100, § 2(h), 35 DCR 1182.)

Legislative history of Law 7-100. — See **3-22, the District of Columbia Smoking Restriction Act of 1979.** — See Mayor's Order 90-192, December 13, 1990.
 note to § 6-913.1.
Delegation of authority under D.C. Law

§ 6-919. Tobacco smoking education and smoking cessation programs.

The Mayor shall establish, in conjunction with the District of Columbia Commissioner of Public Health or any other agencies or departments of the District, a program to educate the general public on the issue of smoking and involuntary smoking, the health risks involved, and the requirements of this subchapter, explaining what the subchapter does and why it is important. The Mayor shall establish a smoking cessation program that provides free counseling, information, and whatever other assistance is deemed necessary by the District of Columbia Commissioner of Public Health for the purpose of assisting, upon request, persons residing in the District of Columbia to stop smoking tobacco products. (Sept. 28, 1979, D.C. Law 3-22, § 11, as added Mar. 29, 1988, D.C. Law 7-100, § 2(i), 35 DCR 1182.)

Legislative history of Law 7-100. — See **3-22, the District of Columbia Smoking Restriction Act of 1979.** — See Mayor's Order 90-192, December 13, 1990.
 note to § 6-913.1.
Delegation of authority under D.C. Law

§ 6-920. Smoking prohibitions pursuant to existing law.

Nothing in this subchapter shall make lawful smoking in any place in which smoking is prohibited pursuant to § 5-1301 et seq., § 44-223(b), or any other District of Columbia or federal law. (Sept. 28, 1979, D.C. Law 3-22, § 12, as added Mar. 29, 1988, D.C. Law 7-100, § 2(j), 35 DCR 1182.)

Legislative history of Law 7-100. — See **3-22, the District of Columbia Smoking Restriction Act of 1979.** — See Mayor's Order 90-192, December 13, 1990.
 note to § 6-913.1.
Delegation of authority under D.C. Law

§ 6-920.1. Distribution of free cigarettes prohibited; penalty.

(a) No person, agent, or employee of any person shall, in the course of doing business, distribute any free cigarettes or other tobacco product to any person on any public street, public sidewalk, public park, playground, in a public building, other public property, or private property open to the public, except that free cigarettes or other tobacco products may be distributed at a tobacco store, a convention, or a conference catering to adults.

(b) Any person who violates subsection (a) of this section shall, upon conviction, be fined not less than \$250 for each violation. (May 2, 1991, D.C. Law 8-262, § 5, 37 DCR 8434.)

Legislative history of Law 8-262. — See note to § 6-913.2.

Subchapter III. Water Pollution Control.

§ 6-921. Definitions.

For the purposes of this subchapter, the term:

(1) “Act” means the Water Pollution Control Act of 1984.

(2) “Aquatic animals and plants” and “aquatic life” mean the animals and plants which have typically lived in or otherwise established as a habitat the waters of the District of Columbia.

(3) “Combined sewer” means a sewer which conveys both sanitary sewage and storm water and may also convey industrial wastewater.

(4) “Criteria” means any of the group of physical, chemical, biological, and radiological water quality parameters and the associated numerical concentrations or levels which compose the numerical standards of the water quality standards and which define a component of the quality of the water needed for a designated beneficial use.

(5) “Discharge” means the spilling, leaking, releasing, pumping, pouring, emitting, emptying, or dumping of any pollutant or hazardous substance, including a discharge from a storm sewer, into or so that it may enter District of Columbia waters.

(6) “District” means the District of Columbia.

(7) “Dredge and fill activity” means the removal of dirt, sediment, sand, gravel, rock, or other solid matter from the underwater lands, and the placement of solid or semi-solid material into the waters of the District so that the material is or may be deposited on the underwater lands; the placement of pipelines, electrical cables, communication lines, tunnels, bulkheads, riprap, structural members of bridges, buildings, piers, and other facilities, and other man-made objects into the waters of the District or the underwater lands. The following activities are excluded: Federal or District navigational aids, permitted discharges of wastewater, removal of floating debris, stormwater discharges, recreational activities of individual private citizens other than mechanized mineral recovery, and the removal of materials accidentally placed in the waters of the District.

(8) “Federal Water Pollution Control Act” means the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 466 et seq.

(9) “Groundwater” means underground water, but excludes water in pipes, tanks, and other containers created or set up by people.

(10) “Hazardous substance” means any toxic pollutant referenced in or designated in or pursuant to § 307(a) of the Federal Water Pollution Control Act; any substance designated pursuant to § 311(b)(2)(A) of the Federal Water Pollution Control Act; or any hazardous waste having the characteristics of

those identified under or listed pursuant to the District of Columbia Hazardous Waste Management Act of 1977, as amended.

(11) "Industrial wastewater" means water that has been used and contains pollutants but does not contain significant amounts of human body waste and disease-causing bacteria and viruses.

(12) "Mayor" means the Mayor of the District of Columbia or any representative or agency designated by the Mayor to carry out the provisions of this subchapter.

(13) "Nonpoint source" means any source from which pollutants are or may be discharged other than a point source.

(14) "Offshore facility" means vessels, pipelines, and other equipment operated in the District of Columbia waters.

(15) "Onshore facility" means equipment, instruments, buildings, vehicles, or other structures not in the water.

(16) "Owner" or "operator" means for a vessel or onshore or offshore facilities, a person owning, operating or chartering by demise the vessel or the facilities.

(17) "Person" means any individual, including any owner or operator as defined in this section; partnership; corporation, including a government corporation; trust association; firm; joint stock company; organization; commission; the District or federal government; or any other entity.

(18) "Point source" means any discrete source of quantifiable pollutants, including but not limited to a municipal treatment facility discharge, residential, commercial or industrial waste discharge or a combined sewer overflow; or any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.

(19) "Pollutant" means any substance which may alter or interfere with the restoration or maintenance of the chemical, physical, radiological, and biological integrity of the waters of the District; or any dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemicals, chemical wastes, hazardous wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, oil, gasoline and related petroleum products, and industrial, municipal, and agricultural wastes.

(20) "Sanitary sewage" or "municipal wastewater" means draining or flushing liquids used to flush or rinse away human body waste from people, liquids used for washing and other household activities, and other liquids or rinsed away waste which may have been contaminated with disease-causing bacteria and viruses.

(21) "Sanitary sewer" means a sewer for waste materials, but not one for rain water.

(22) "Sludge" means the solid or semi-solid material removed from wastewater during treatment, including but not limited to grit, screenings, grease, oil, settleable solids, and chemicals added to the treatment processes.

(23) "Treatment facility" means the plant, the equipment, and the operations used to eliminate pollutants in wastewater, and includes the facilities and the activities administering to or supplying the treatment of wastewater.

(24) "Underwater land" means the land beneath the waters of the District at mean high tide or the ordinary high waterline or the elevation of the highest water stage that occurs at a frequency of once per year.

(25) "Wastewater" means the waters which have been removed from their normal course or place and have been used in a manner that pollutants have been added or increased during the use, or have been altered so that discharge into the waters of the District may result in pollution.

(26) "Waters of the District" or "District waters" means flowing and still bodies of water, whether artificial or natural, whether underground or on land, so long as in the District of Columbia, but excludes water on private property prevented from reaching underground or land watercourses, and also excludes water in closed collection or distribution systems.

(27) "Wetland" means a marsh, swamp or other area periodically inundated by tides or having saturated soil conditions for prolonged periods of time and capable of supporting aquatic vegetation. (Mar. 16, 1985, D.C. Law 5-188, § 2, 32 DCR 919.)

Cross references. — As to sewerage agreement with Virginia, see § 1-1122.

As to soil and water conservation, see Chapter 28 of Title 1.

As to hazardous waste management, see Chapter 7 of this title.

As to harbor regulations, see § 22-1701.

As to malicious pollution of water, see § 22-3118.

Section references. — This section is referred to in § 6-936.

Legislative history of Law 5-188. — Law 5-188, the "Water Pollution Control Act of 1984," was introduced in Council and assigned Bill No. 5-326, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on December 4, 1984, and December 18, 1984, respectively. Signed by the Mayor on January 11, 1985, it was assigned Act No. 5-253 and transmitted to both Houses of Congress for its review.

References in text. — The "Water Pollution Control Act of 1984," referred to in paragraph (1) of this section, is D.C. Law 5-188.

The Federal Water Pollution Control Act, referred to in paragraph (8), is now codified at 33 U.S.C. § 1251 et seq.

"Section 307(a) of the Federal Water Pollution Control Act," referred to in paragraph (10) of this section, is classified as 33 U.S.C. § 1317 (a).

"Section 311(b)(2)(A) of the Federal Water Pollution Control Act," referred to in paragraph (10) of this section, is classified as 33 U.S.C. § 1321(b)(2)(A).

The "District of Columbia Hazardous Waste Management Act of 1977," referred to in paragraph (10) of this section, is D.C. Law 2-64.

Delegation of authority pursuant to D.C. Law 5-188. — See Mayor's Order 85-152, September 12, 1985.

§ 6-922. Discharge of pollutants prohibited; exception.

Except as provided in § 6-926, no person shall discharge a pollutant to the waters of the District. (Mar. 16, 1985, D.C. Law 5-188, § 3, 32 DCR 919.)

Legislative history of Law 5-188. — See note to § 6-921.

§ 6-923. Protection of aquatic life.

(a) While regulating against water pollution and except as provided in subsection (d) of this section, the Mayor shall protect aquatic animals and plants, and shall preserve and restore aquatic life in District waters for aesthetic enjoyment, for recreation, and for industry.

(b)(1) The Mayor shall study the number and the well-being of aquatic plants and animals, and shall determine the need to license or otherwise limit fishing and other forms of hunting, sports or industry which take or destroy aquatic life or the aquatic habitat. The Mayor shall consider the economic impact upon the various segments of the public before establishing fees for licenses.

(2) The Mayor may establish fishing seasons and other seasons for hunting, sports or industry, which take or destroy aquatic life or the aquatic habitat.

(3) Revenues from a licensing regulatory scheme under this section shall be used only for protecting and managing aquatic life.

(c) The Mayor may enter into agreements with state and federal agencies to manage and protect aquatic life.

(d) The Mayor may protect against aquatic life which creates a nuisance in the District. (Mar. 16, 1985, D.C. Law 5-188, § 4, 32 DCR 919.)

Legislative history of Law 5-188. — See note to § 6-921.

§ 6-924. Classification of beneficial uses of waters.

(a) At least once every 3 years, the Mayor shall review the water quality standards and if appropriate revise the classification of the beneficial uses of the waters and the criteria for water needed for the particular classes of beneficial uses.

(b) The classifications and the criteria shall accompany guidelines for preserving the waters for the beneficial uses and for preventing harm to the water quality.

(c) Before promulgating the classifications, criteria, and guidelines, the Mayor shall consider the environmental, technological, institutional, and socio-economic impact of applying and enforcing them.

(d) The Mayor shall regularly monitor District waters, according to their classification under subsection (a) of this section, to determine whether the water fulfills the quality standards established under this subchapter. (Mar. 16, 1985, D.C. Law 5-188, § 5, 32 DCR 919.)

Legislative history of Law 5-188. — See note to § 6-921.

§ 6-925. Monitoring for compliance with subchapter.

(a) The Mayor shall ensure that all monitoring for compliance under this subchapter acquires accurate data and forms the basis for valid and reliable determinations.

(b) Monitoring for compliance as a condition for a permit under this subchapter shall comply with a quality assurance plan approved by the Mayor. (Mar. 16, 1985, D.C. Law 5-188, § 6, 32 DCR 919.)

Legislative history of Law 5-188. — See note to § 6-921.

§ 6-926. Certain discharges permitted; terms of permit; additional enforcement procedures; effect of federal permit; public hearing on permit; special requirements for treatment facilities; permits for industrial discharges; certain discharges from watercraft prohibited.

(a) Except that no one may discharge into a sewer corrosive, flammable, or explosive material, or material that may adversely affect the structure of a sewer line, the Mayor may:

(1) Allow activity which, from a point source, discharges a hazardous substance, oil or other pollutant;

(2) Limit pollution from nonpoint sources to a feasible degree; and

(3) Except as provided in subsection (d) of this section, allow dredging and filling activities on underwater lands to the extent that the activities do not interfere with fish migration, and to the extent that the aquatic habitat remains preserved or the mitigation of the destruction of the habitat takes place.

(b) If the Mayor permits any discharge under subsection (a)(1) of this section, then the Mayor shall:

(1) Permit the discharge and the regulated activity according to this subchapter, the Federal Water Pollution Control Act, and regulations related to these acts of legislation;

(2) Explicitly list the conditions under which the discharge will be permitted;

(3) Explicitly determine the amount of wastewater and pollutants that will be permitted under the permit referred to in this section;

(4) Clearly establish the location of the discharge;

(5) Require any monitoring and reporting by the permittee to ensure compliance with the terms and conditions of the permit;

(6) Limit any other types or sources of pollution that may occur as a result of the operation;

(7) Ensure that District waters, waters in adjacent and downstream states, and the beneficial uses of these waters will not be harmed or degraded by the discharge or a combination of discharges; and

(8) Permit the discharge according to the most stringent of the following:

- (A) The maintenance or attainment of water quality standards; or
- (B) Removing pollutants with control technology.

(c)(1) If the Mayor limits pollution from nonpoint sources under subsection (a) (2) of this section, then the regulation of the nonpoint sources shall apply to real estate construction and development.

(2) Before any real estate construction takes place, the person performing the construction or the development shall obtain a permit for controlling pollution from the nonpoint source.

(d) Before the permit is issued under subsection (a)(1) or (3) of this section, the Mayor may require the person to be permitted to perform studies to ensure conformance with this subchapter.

(e)(1) The permit shall be valid for a period not to exceed 5 years and may be renewed for up to 5-year increments; provided the Mayor may by regulation provide for modification, revocation and reissuance, and termination of permits.

(2) If the permittee timely files a complete application for renewal according to the renewal terms of the permit, then, during any delay before the permit is renewed, the Mayor may extend the validity of the expired permit for 6-month periods until the renewal takes place.

(f)(1) If an affected state protests against a permit or a term in a permit, then the Mayor shall include the protest in the record concerning the application for the permit and shall duly consider the protest.

(2) The Mayor shall deliver to the United States Environmental Protection Agency a copy of the protest and the Mayor's preliminary determination concerning the protest.

(g) In addition to the enforcement procedures otherwise provided for in this subchapter, if any person violates a permit condition, discharges without a permit, or submits a fraudulent report to the Mayor, the Mayor may:

(1) Revoke or modify the permit; or

(2) Require the permittee to submit for approval a plan to eliminate the violation and in this plan describe the personnel, engineering, and the operations necessary to eliminate any further violation of this subchapter.

(h) Those persons having a permit which has been issued by the United States Environmental Protection Agency prior to March 16, 1985, shall be exempted from the requirement for obtaining a permit under the provisions of this subchapter until the expiration date of the United States Environmental Protection Agency permit, at which time a permit from the District will be required. However, the conditions of the permit issued by the United States shall continue in force until the effective date of a permit issued by the Mayor if:

(1) The expired permit would remain in effect pursuant to applicable federal regulations;

(2) Either the regulations to implement this subsection are not yet effective; or

(3) The permittee has submitted a timely and complete application for a District permit; and, the Mayor, through no fault of the permittee, does not issue a new permit on or before the expiration date of the previous permit.

(i) Before issuing any permit, the Mayor shall provide notice of the intent to issue the permit and the opportunity for a public hearing.

(j) Before a federal permit is issued, the Mayor shall certify whether the permit conforms with this subchapter, the Federal Water Pollution Control Act, and the related regulations.

(k)(1) Treatment facilities shall keep and have available a current manual describing the operation and maintenance procedures for the facility.

(2) The Mayor shall periodically inspect and monitor permitted facilities to evaluate the operation and maintenance of the facility.

(l) The Mayor may issue permits for industrial discharges to sanitary sewers flowing to municipal treatment facilities.

(m) The discharge of sanitary sewage, wash or process water, oil laden bilge water, refuse, or litter from watercraft is prohibited. (Mar. 16, 1985, D.C. Law 5-188, § 7, 32 DCR 919.)

Section references. — This section is referred to in § 6-922.

Legislative history of Law 5-188. — See note to § 6-921.

References in text. — The Federal Water Pollution Control Act, referred to in subsections (b)(1) and (j), is codified at 33 U.S.C. § 1251 et seq.

§ 6-927. Location of discharge; recognition of reduction of pollutants; restrictions on quantity of materials discharged; discharge of used motor oil to sewer prohibited.

(a) While pollution from point sources into storm sewers shall be considered discharges into District waters, the location of the discharge of the storm sewer wastewater into the waters of the District or other jurisdictions shall be the location of the discharge for any permit issued by the Mayor.

(b) Except for loss of heat, no reduction of pollutants in the discharged wastewater while flowing in the storm sewer will be recognized by the Mayor.

(c) No person shall discharge to a sanitary or combined sewer any material in a quantity which would interfere with or pass through a municipal treatment facility or a unit process of the facility, cause or contribute to a violation of any permit or water quality standard, or interfere with the potential to use sludge for a beneficial purpose.

(d) The discharge of oil, gasoline, anti-freeze, acid, or other hazardous substance, pollutant or nuisance material to any street, alley, sidewalk or other public space in quantities sufficient to constitute a hazard or nuisance is prohibited.

(e) The discharge of used motor oil to any sewer is prohibited. (Mar. 16, 1985, D.C. Law 5-188, § 8, 32 DCR 919.)

Legislative history of Law 5-188. — See note to § 6-921.

§ 6-928. Discharge of pollutant from vessel or onshore or offshore facility; removal of these pollutants; contingency plan for environmental emergencies.

(a)(1) A person in charge of a vessel or an onshore or an offshore facility shall, as soon as a discharge of a pollutant from the vessel or the facility has been discovered, notify the Mayor about the discharge.

(2) Notice or information resulting from the notice shall not be used against a person in a criminal case, except a prosecution for perjury or for giving a false statement.

(b) Whenever there is a discharge or a substantial threat of discharge into the waters of the District of a hazardous substance, or there is a discharge or substantial threat of discharge into the waters of the District of a pollutant which may present an imminent and substantial danger to the public health or welfare, including danger to the livelihood of members of the public health or welfare, the Mayor is authorized to act to remove or arrange for the removal of the pollutant, and the Corporation Counsel of the District may bring suit on behalf of the District in the Superior Court of the District of Columbia or any other court of competent jurisdiction to restrain immediately any person causing or contributing to a discharge or threat of discharge, to recover any costs of removal incurred by the District, to impose civil penalties or to seek any other relief as the public interest may require.

(c)(1) By September 1, 1985, the Mayor shall establish a contingency plan for responding to environmental emergencies pursuant to the authority granted in this section.

(2) The plan shall provide for the following:

(A) Organize and assign duties among District agencies;

(B) Manage the procurement and use of emergency equipment and supplies;

(C) Establish a special group of trained personnel to carry out the plan;

(D) Develop surveillance designed to watch for emergencies and to provide the earliest possible notice to the appropriate District and federal agencies;

(E) Establish a control center to direct the operations of the plan;

(F) Establish procedures and techniques for removing the pollutant; and

(G) Establish or cooperate in a system for state and local coordination.

(Mar. 16, 1985, D.C. Law 5-188, § 9, 32 DCR 919.)

Cross references. — As to throwing or depositing matter in Potomac River, see § 22-1702.

Legislative history of Law 5-188. — See note to § 6-921.

Section references. — This section is referred to in §§ 6-929, 6-936, and 6-937.

§ 6-929. Accounting for revenues and expenses of pollutant removal; available funds for future years; District of Columbia Revolving Water Pollution Control Fund.

(a)(1) The Mayor shall establish a financial system to account for revenues and expenses associated with removing pollutants.

(2) Civil penalties and other charges recovered under §§ 6-935 through 6-939 shall finance the pollution removal when the person responsible for the pollution cannot be found and the Mayor determines that the pollution should be removed, and may be used to purchase equipment and supplies for the § 6-928(c) plan.

(3) Agencies may be reimbursed after incurring expenses for removing or preventing the spread of pollution.

(b) After reimbursements and discretionary equipment purchases under subsection (a) of this section at the end of the fiscal year, the Mayor shall make available for use in future years subsection (a)(2) funds up to \$250,000.

(c)(1) The District of Columbia Revolving Water Pollution Control Fund ("DCRF") to be administered by the water pollution control agency of the District of Columbia, as designated by the Mayor, is established to provide financial assistance under the Water Quality Act of 1987 (33 U.S.C. § 1251 et seq.) ("Water Quality Act"), to finance planning, design, and construction of publicly owned water pollution control projects; to develop and implement management programs for non-point source pollution control established under § 319 of the Water Quality Act; and to develop and implement estuary conservation and management programs under § 320 of the Water Quality Act.

(2) The Mayor shall enter into an operating agreement with the Administrator of the United States Environmental Protection Agency ("Administrator") and accept capitalization grants for the DCRF in accordance with the payment schedule policy established by the Administrator.

(3) A separate account or accounts, as necessary, shall be established for DCRF transactions.

(4) All payments from the Administrator pursuant to paragraph (2) of this subsection shall be deposited in the revolving fund account or accounts established pursuant to paragraph (3) of this subsection.

(5) The Mayor shall seek an appropriation of funds from the United States Congress to deposit into the DCRF account in an amount equal to or greater than 20% of each capitalization grant payment from the Administrator no later than the date of each federal payment.

(6) The Mayor shall seek an appropriation of the required funds from the United States Congress for the administration of the DCRF program.

(7) The DCRF monies shall be used only for the following purposes in accordance with the requirements of § 603(d)(1) of the Water Quality Act:

(A) To make loans;

(B) To buy or refinance debt obligations of the District;

(C) To guarantee or purchase insurance for debt obligations of the District;

(D) As a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the District for the DCRF;

(E) To earn interest on DCRF accounts; or

(F) For DCRF administrative expenses.

(8) The revolving fund shall be maintained and credited with repayments, and the fund balances shall be available in perpetuity for the purposes stated in paragraph (1) of this subsection.

(9) The Mayor shall establish fiscal controls and accounting procedures sufficient to assure proper accounting for payments received by the DCRF, disbursements made by the DCRF, and fund balances, at the beginning and end of each accounting period.

(10) Financial assistance from DCRF shall be provided only for those projects that the District's water pollution control agency has determined to be a priority, in accordance with this subchapter and the Water Quality Act.

(11) The Mayor shall provide the Administrator with any records reasonably required to review and determine compliance with applicable provisions of the Water Quality Act.

(12) The DCRF shall be subject to applicable provisions of Title VI of the Water Quality Act, the United States Environmental Protection Agency Guidance on the State Revolving Fund, and all other applicable federal and District laws.

(13) The DCRF shall be subject to the Tax Reform Act of 1986 (26 U.S.C. § 101 et seq.), to benefit from the applicable tax regulations.

(14) The Mayor shall issue rules, pursuant to subchapter I of Chapter 15 of Title 1, for the operation of the DCRF and for conducting environmental reviews and evaluations of DCRF projects. The rules shall ensure that:

(A) Provisions are made to implement mitigation measures to make a project environmentally acceptable; and

(B) The public is provided a right to challenge environmental review determinations. (Mar. 16, 1985, D.C. Law 5-188, § 10, 32 DCR 919; Mar. 15, 1990, D.C. Law 8-83, § 2, 37 DCR 41.)

Cross references. — As to organization of fund structure, see § 47-373.

Legislative history of Law 5-188. — See note to § 6-921.

Legislative history of Law 8-83. — Law 8-83, the "Water Pollution Control Act of 1984 Amendment Act of 1989," was introduced in Council and assigned Bill No. 8-370, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on November 21, 1989, and December 5, 1989, respectively. Signed by the Mayor on

December 21, 1989, it was assigned Act No. 8-133 and transmitted to both Houses of Congress for its review.

References in text. — Sections 319 and 320 of the Water Quality Act of 1987, referred to in (c)(1), are codified at 33 U.S.C. §§ 1329 and 1330, respectively.

Section 603(d)(1) of the Water Quality Act, referred to in (c)(7), is codified at 33 U.S.C. § 1383(d)(1). Title VI of the Water Quality Act, referred to in (c)(12), is codified at 33 U.S.C. § 1381 et seq.

§ 6-930. Spill prevention and cleanup plan for onshore or offshore facility; discharge from underground facility; testing of underground tanks for leaks.

(a)(1) No person shall store a pollutant or hazardous substance at an onshore or offshore facility until the Mayor has approved a spill prevention and cleanup plan for the pollutant or hazardous substance.

(2) The plan shall describe the procedures and the equipment, as well as the personnel preparations, for preventing and cleaning up a spill of the pollutant into District waters.

(b)(1) If information indicates that a discharge exists from an underground facility then the Mayor may require the owner or operator to monitor to determine if the discharge exists and the extent of the discharge.

(2) The Mayor may also require the owner or operator to remove and prevent the spread of the discharge.

(c) The owner or operator of an underground storage tank containing oil, gasoline, or any other pollutant shall test the tank at regular intervals for leaks in conformity with the requirements of subchapter VIII of this chapter. (Mar. 16, 1985, D.C. Law 5-188, § 11, 32 DCR 919; Mar. 8, 1991, D.C. Law 8-242, § 14, 38 DCR 344.)

Legislative history of Law 5-188. — See note to § 6-921.

Legislative history of Law 8-242. — See note to § 6-995.1.

§ 6-931. Water quality management plan.

(a) The Mayor shall establish a water quality management plan according with which activities regulated under this subchapter shall comply.

(b) The plan should include pollution control alternatives, evaluation of the attainment of the water quality standards, the population affected, the costs of implementing the plan, the designation of agencies to implement the various portions of the plan, and the benefits of implementing the plan.

(c) The plan shall be reviewed periodically.

(d) The Mayor may certify that water quality management plans from the state, the local, or the federal government are acceptable.

(e) The Mayor shall review environmental impact statements and assessments, feasibility studies, facility plans, and other proposals in order to determine if the activity conforms with the water quality management plans of the District. (Mar. 16, 1985, D.C. Law 5-188, § 12, 32 DCR 919.)

Legislative history of Law 5-188. — See note to § 6-921.

§ 6-932. Mayor authorized to issue research grants.

The Mayor may issue grants for research concerning the quality of the District waters to universities and institutions. (Mar. 16, 1985, D.C. Law 5-188, § 13, 32 DCR 919.)

Legislative history of Law 5-188. — See note to § 6-921.

Extension of authority. — The authority of the Mayor to issue grants under this section was extended to both the Department of Regulatory Affairs and the Department of Public

Works by Reorganization Plan No. 2 of 1987, effective July 3, 1987.

Delegation of authority pursuant to Law 5-188. — See Mayor's Order 87-278, December 11, 1987.

§ 6-933. Mayor authorized to regulate construction.

(a) The Mayor may regulate construction that bears upon the quality of the waters of the District.

(b) No person shall construct a treatment facility which has not been approved by the Mayor before construction begins. (Mar. 16, 1985, D.C. Law 5-188, § 14, 32 DCR 919.)

Legislative history of Law 5-188. — See note to § 6-921.

§ 6-934. Use of sludge from treatment facilities.

(a) The Mayor may review and, as appropriate, approve studies, plans and specifications, operating manuals, and procedures for the disposal or use of sludge from treatment facilities and shall issue construction or operation permits.

(b) If the use of the sludge involves distribution to the public, then a distribution permit will also be required specifying the quality control and health protection conditions which must be met prior to distribution.

(c) For sludge originating outside of the District, a permit by reciprocity may be issued based upon an evaluation of the regulations of the originating state. (Mar. 16, 1985, D.C. Law 5-188, § 15, 32 DCR 919.)

Legislative history of Law 5-188. — See note to § 6-921.

§ 6-935. Subpoena and inspection powers of Mayor.

(a) The Mayor may issue subpoenas to compel the presentation of information pertinent to the regulation of the quality of District waters.

(b)(1) The Mayor may inspect and monitor facilities, discharges, activities, equipment, waters, and other items pertinent to the regulation of the quality of District waters.

(2) The inspection shall be reasonably calculated to ensure compliance with the purposes of this subchapter. (Mar. 16, 1985, D.C. Law 5-188, § 16, 32 DCR 919.)

Section references. — This section is referred to in § 6-929.

Legislative history of Law 5-188. — See note to § 6-921.

§ 6-936. Penalties.

(a)(1) A person who willfully or negligently violates this subchapter or the regulations promulgated pursuant to this subchapter shall be guilty of a misdemeanor.

(2) The person shall be fined at least \$2,500 or no more than \$25,000 for each day of the violation, imprisoned for no more than 1 year, or both fined and imprisoned according to this paragraph.

(3) If the person has been previously convicted under this subsection, then the person shall be fined at least \$2,500 or no more than \$50,000 for each day of the violation, imprisoned for no more than 2 years, or both fined and imprisoned according to this paragraph.

(b)(1) Any person who knowingly makes a false statement in an application, record, report, plan, or other document maintained under this subchapter shall be guilty of a misdemeanor.

(2) The person shall be fined no more than \$10,000, imprisoned no more than 6 months, or both fined and imprisoned according to this paragraph.

(c) Any person who violates § 6-928(a)(1) shall be guilty of a misdemeanor.

(d) For the purposes of this section, the term "person" shall mean, in addition to the definition contained in § 6-921, any responsible corporate officer.

(e) The Corporation Counsel shall prosecute violations of this subchapter in the Superior Court of the District of Columbia or any other court of competent jurisdiction.

(f) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this subchapter, or any rules or regulations issued under the authority of this subchapter, pursuant to subchapters I through III of Chapter 27 of this title. Adjudication of any infraction shall be pursuant to subchapters I through III of Chapter 27 of this title. (Mar. 16, 1985, D.C. Law 5-188, § 17, 32 DCR 919; Oct. 5, 1985, D.C. Law 6-42, § 401, 32 DCR 4450.)

Cross references. — As to conduct of prosecutions, see § 23-101.

Section references. — This section is referred to in § 6-929.

Legislative history of Law 5-188. — See note to § 6-921.

Legislative history of Law 6-42. — See note to § 6-916.

§ 6-937. Enforcement of subchapter.

(a) When the Mayor has reason to believe that a person has violated this subchapter or regulations or orders established under this subchapter, the Mayor shall enforce this subchapter by use of any measure, or combination of measures, authorized by this subchapter; provided, however, that a person shall not, for the same violation, be assessed a civil penalty through both the judicial and the administrative processes.

(b)(1) For violations of the law referred to in subsection (a) of this section, the Mayor may order the following:

(A) That the person comply with this subchapter;

(B) Order the person to eliminate the violation; and

(C) Set a deadline for the person's compliance with the commands under subparagraphs (A) and (B) of this paragraph.

(2)(A) The Mayor shall with the order notify the person that the person has a right to timely challenge the order at a hearing before the Mayor, where the hearing will determine whether the order shall become effective.

(B) The order shall state with reasonable specificity the nature of the violation.

(C) The order shall set forth the corrective or remedial action to be taken.

(D) The order shall clearly explain when it shall become effective.

(E) The order shall clearly state the deadline for the person to request a hearing with the Mayor under subparagraph (F) of this paragraph.

(F) If the person requests a hearing, then the Mayor shall conduct a hearing within 10 days of receiving the request and shall render a decision concerning the order within 10 days of the hearing.

(3) Any compliance order issued by the Mayor may be served personally or by registered mail to the person's last known address, as shown on the Mayor's records.

(c)(1) If water quality sufficient for a designated beneficial use of the water quality standards is not being attained or maintained and there is reason to believe that the use represents a health hazard to the public, the Mayor shall issue an order forbidding the use.

(2) The orders shall contain the following to the extent needed:

(A) The use which is forbidden;

(B) The waters affected by the order;

(C) The duration of the order;

(D) The health hazard involved;

(E) The reason the health hazard is believed to exist;

(F) The penalty for violating the order; and

(G) The measures needed to implement the order and to improve the water quality.

(d)(1) A civil penalty under § 6-938(b)(2) may be assessed by the Mayor after the Mayor notifies and provides an opportunity for a hearing to the person charged with the violation.

(2) If the Mayor charges a civil penalty under this subsection, then the Mayor shall consider the following while determining the amount of the penalty:

(A) The gravity of the offense;

(B) The care shown by the owner, operator, or person in charge; and

(C) The extent of the success in mitigating the effects of the discharge.

(e) Except where an owner or operator can prove that an unauthorized discharge was caused solely by (1) an act of God, (2) negligence on the part of the District, (3) an act of war, (4) an act or omission of a 3rd party, or (5) any combination of the foregoing causes, an owner or operator of any vessel or onshore or offshore facility from which a hazardous substance or pollutant is discharged shall be liable for the full costs of removal, or for the cost of any assistance provided or arranged by the Mayor, in accordance with § 6-928(b),

and for such amount as represents the damage to water quality and the aquatic life, in addition to any civil penalty. (Mar. 16, 1985, D.C. Law 5-188, § 18, 32 DCR 919.)

Section references. — This section is referred to in §§ 6-929 and 6-938.

Legislative history of Law 5-188. — See note to § 6-921.

§ 6-938. Civil actions.

(a)(1) The Mayor is authorized to institute a civil action for a prohibitory or mandatory injunction or other appropriate relief by way of a temporary restraining order, preliminary or permanent injunction, or other judicial decree.

(2) The action shall be brought in the Superior Court of the District of Columbia or any other court of competent jurisdiction.

(3) In any action under this subsection, upon a showing that any person is violating or is about to violate any provision of this subchapter or any regulations promulgated pursuant to this subchapter or any order, permit, or permit condition established according to this subchapter, the court may grant an injunction without requiring a showing of a lack of an adequate remedy at law.

(b)(1) For violations of this subchapter or related regulations or orders, the Mayor may bring civil action in the Superior Court of the District of Columbia or any other court of competent jurisdiction.

(2)(A) A person who violates the laws referred to in paragraph (1) of this subsection shall be subject to a civil penalty of no more than \$50,000 for each violation.

(B) A person who willfully violates the laws referred to in paragraph (1) of this subsection shall be subject to a civil penalty of no more than \$250,000 for each violation.

(C) The court shall determine the amount of the civil penalty under this paragraph based on consideration of the following factors:

- (i) The size of the person's business;
- (ii) The ability of the person to continue the business despite the penalty;
- (iii) The seriousness of the violation; and
- (iv) The nature and the extent of success in the person's efforts to mitigate the effects of the discharge.

(3) If the Mayor does not apply the administrative remedy under § 6-937 (d)(1), then the Mayor may bring suit in the Superior Court of the District of Columbia or any other court of competent jurisdiction to charge the penalty described in paragraph (2) of this subsection.

(4) Each violation of the laws referred to in paragraph (1) of this subsection shall be considered a separate offense. (Mar. 16, 1985, D.C. Law 5-188, § 19, 32 DCR 919.)

Section references. — This section is referred to in §§ 6-929 and 6-937.

Legislative history of Law 5-188. — See note to § 6-921.

§ 6-939. Private rights of action permitted; prior notice to Mayor; regulations and investigations concerning reported violations.

(a) Any citizen of the District, private party, company, business, or citizen group may commence a civil action against any person who is in violation of any provision of this subchapter; provided, that no such action may be commenced unless:

(1) The complaining person has, at least 90 days prior to the commencement of such action, given the Mayor and the alleged violator notice of the alleged violation and of the intention to sue; and

(2) The Mayor has not within the 90-day period either taken reasonable action to bring the alleged violator into compliance or initiated enforcement proceedings in accordance with this subchapter.

(b)(1) The Mayor shall promulgate regulations for receiving and ensuring proper consideration of information submitted by the public about violations.

(2) The Mayor shall investigate and provide a written response to all reports submitted in accord with the procedures promulgated pursuant to paragraph (1) of this subsection.

(3) The Mayor shall not oppose intervention by any citizen in a civil action brought pursuant to this section.

(4) Before settlement of any enforcement action brought pursuant to this section the Mayor shall publish notice of the proposed settlement in the District of Columbia Register and shall allow at least 30 days for public comment. (Mar. 16, 1985, D.C. Law 5-188, § 20, 32 DCR 919.)

Section references. — This section is referred to in § 6-929.

Legislative history of Law 5-188. — See note to § 6-921.

§ 6-940. Rules.

The Mayor shall issue rules to implement the provisions of this subchapter pursuant to subchapter I of Chapter 15 of Title 1. (Mar. 16, 1985, D.C. Law 5-188, § 21, 32 DCR 919.)

Legislative history of Law 5-188. — See note to § 6-921.

Subchapter IV. Wastewater Control.

§ 6-951. Purpose.

In enacting this subchapter, the Council of the District of Columbia supports the following statutory purposes and objectives:

(1) To provide for the maximum possible beneficial public use of the District's wastewater system;

(2) To prevent the introduction of pollutants into the wastewater system which will interfere with the operation of the system or the use or disposal of sludge and residue;

(3) To prevent the introduction of pollutants into the wastewater system which will pass through the system inadequately treated and into receiving waters or into the atmosphere or will otherwise be incompatible with the system;

(4) To improve the opportunity to recycle and reclaim wastewater and sludge from the system;

(5) To prevent tampering or misuse of the wastewater system; and

(6) To provide procedures for complying with the requirements contained in this statute. (Jan. 25, 1986, D.C. Law 6-76, § 2, 32 DCR 6478; Mar. 12, 1986, D.C. Law 6-95, § 2, 33 DCR 577.)

Legislative history of Law 6-76. — Law 6-76, the “Wastewater System Regulation Temporary Act of 1985,” was introduced in Council and assigned Bill No. 6-314, which was retained by Council. The Bill was adopted on first and second readings on September 24, 1985, and October 8, 1985, respectively. Signed by the Mayor on November 4, 1985, it was assigned Act No. 6-99 and transmitted to both Houses of Congress for its review.

6-95, the “Wastewater System Regulation Amendment Act of 1985,” was introduced in Council and assigned Bill No. 6-189, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on December 3, 1985, and December 17, 1985, respectively. Signed by the Mayor on January 15, 1986, it was assigned Act No. 6-124 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-95. — Law

§ 6-952. Definitions.

For the purposes of this subchapter, the term:

(1) “Act” means the Federal Water Pollution Control Act, also known as the Clean Water Act, as amended (33 U.S.C § 1251 et seq.).

(2) “Discharge” means any solid, liquid, or gas introduced into the wastewater system.

(3) “District” means the District of Columbia.

(4) “Interference” means the inhibition or disruption of the District’s wastewater system processes or operations which causes, may cause, or contributes to a violation of any requirement of the District’s National Pollutant Discharge Elimination System permit, or which threatens life, property, or environment. Interference includes inhibition or prevention of legitimate sludge use or disposal.

(5) “Mayor” means the Mayor of the District of Columbia.

(6) “Objectionable color” means a color inappropriate for the normal characteristics of the receiving water.

(7) “NPDES” means the National Pollutant Discharge Elimination System.

(8) “Person” means any natural person, partnership, copartnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity or any other legal entity, or their legal representatives, agents, or assigns.

(9) “Pollutant” means any substance which induces or may induce an alteration of the chemical, physical, biological, or radiological integrity of water, which has or may have a detrimental effect on a subsequent use of that water, or which interferes or may interfere with the wastewater system.

(10) "Pretreatment" means the elimination of or reduction in the amount of pollutants or the alteration of the nature of pollutant properties in wastewater to a less detrimental state prior to discharge into the District's wastewater system.

(11) "Septic tank" means a watertight receptacle which receives the discharge from a drainage system or a part of the drainage system, and is designed and constructed to separate solids from the liquid, decompose organic matter through a period of detention, and allow the liquids to discharge into the soil outside of the tank.

(12) "Sludge and residue" means the accumulated solids, grease, liquids, and scum separated from wastewater during the wastewater treatment process.

(13) "Slug load" means pollutant, including pollutants which use oxygen.

(14) "User" means any person who discharges, causes, or permits the discharge of wastewater into the District's wastewater system.

(15) "Wastewater" means the liquid and water-carried wastes from dwellings, commercial buildings, industrial facilities, institutions, and swimming pools.

(16) "Wastewater system" means the devices, facilities, structures, equipment, or works owned, operated, maintained, or used by the District for the purpose of the transmission, storage, treatment, recycling, and reclamation of wastewater or to recycle or reuse water, including intercepting sewers, outfall sewers, wastewater collection systems, treatment, pumping, power, and other equipment and their appurtenances, extensions, improvements, remodeling of improvements, additions, and alterations to the additions, elements essential to provide a reliable recycled water supply such as standby treatment units and clear well facilities, and any works, including land, that are or may be an integral part of the treatment process or that are or may be used for disposal of sludge and residue resulting from such treatment, and sewers designated as storm sewers shall be considered a part of the wastewater system for purposes of this subchapter. (Jan. 25, 1986, D.C. Law 6-76, § 3, 32 DCR 6478; Mar. 12, 1986, D.C. Law 6-95, § 3, 33 DCR 577.)

Legislative history of Law 6-76. — See note to § 6-951.

Legislative history of Law 6-95. — See note to § 6-951.

§ 6-953. Separate agreements.

Nothing in this subchapter shall be construed as prohibiting any agreement between the District and any user of the wastewater system under which wastewater of specific strength or character is accepted into the wastewater system and treated subject to any payments or fees as may be applicable, except that national pretreatment standards shall not be waived. (Jan. 25, 1986, D.C. Law 6-76, § 4, 32 DCR 6478; Mar. 12, 1986, D.C. Law 6-95, § 4, 33 DCR 577.)

Legislative history of Law 6-76. — See note to § 6-951.

Legislative history of Law 6-95. — See note to § 6-951.

§ 6-954. Falsifying information.

Any person who knowingly makes any false statement, representation, or certification in any information or data submitted to, or required by, the District under this subchapter, or the rules and regulations promulgated pursuant to this subchapter, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method, upon conviction, shall be liable for the penalties provided in § 6-964. (Jan. 25, 1986, D.C. Law 6-76, § 5, 32 DCR 6478; Mar. 12, 1986, D.C. Law 6-95, § 5, 33 DCR 577.)

Cross references. — As to criminal penalty for false statements, see § 22-2514.

Legislative history of Law 6-95. — See note to § 6-951.

Legislative history of Law 6-76. — See note to § 6-951.

§ 6-955. Tampering and misuse.

No person shall break, alter, damage, tamper with, or otherwise interfere with or impair the wastewater system. (Jan. 25, 1986, D.C. Law 6-76, § 6, 32 DCR 6478; Mar. 12, 1986, D.C. Law 6-95, § 6, 33 DCR 577.)

Cross references. — As to defacing public or private property, see § 22-3112.1.

Legislative history of Law 6-95. — See note to § 6-951.

Legislative history of Law 6-76. — See note to § 6-951.

§ 6-956. Regulation.

(a) The Mayor is authorized to establish a system of wastewater treatment allocation.

(b) No user shall discharge or cause to be discharged any of the following described substances into the District's wastewater system:

(1) Any liquids, solids, or gases which by reason of their nature or quantity are, or may be, sufficient either alone or by interaction with other substances to cause fire or explosion or to injure in any other way the wastewater system or the processes or operation and maintenance of the system. No 2 successive readings on an explosion hazard meter, whether at the point of discharge into the wastewater system or at any other point in the system, shall exceed 5% nor shall any single reading be over 10% of the lower explosive limit of an explosion hazard meter. Prohibited materials include, but are not limited to, gasoline, kerosene, naphtha, benzene, toluene, xylene, ethers, alcohols, ketones, aldehydes, peroxides, chlorates, perchlorates, bromates, carbides, hydrides, and sulfides.

(2) Solid or viscous substances with a specific gravity greater than 2.50, or having any linear dimension greater than 1 inch, or which will or may cause, or contribute to obstruction of the flow in a sewer or otherwise interfere with the operation of the wastewater system including, but not limited to, grease, incompletely shredded garbage, animal remains, blood, feathers, ashes, cinders, sand, spent lime, stone or marble dust, metal, glass, straw, shavings, grass clippings, rags, spent grains, waste paper, wood, plastic, gas tar, asphalt

residues, residues from refining or processing of fuel or lubricating oil, mud, or glass grinding or polishing wastes.

(3) Any wastewater having a pH (that is, a base 10 logarithm of the reciprocal of the concentration of hydrogen ions stated in grams per liter) of less than 5, or greater than 10, or having any other corrosive property capable of damaging or creating a hazard to structures, equipment, processes, and personnel of the wastewater system.

(4) Any wastewater containing a toxic pollutant, or other pollutant described in § 307(a) of the Act, in sufficient quantity to inhibit or interfere with any wastewater treatment process, constituting a hazard to humans or animals, or creating a toxic effect in the receiving water, either alone or by interaction with other pollutants.

(5) Any noxious or malodorous liquids, gases, or solids which either alone or by interaction with other wastes are capable of creating a public nuisance or hazard to life, or are sufficient to prevent entry by District personnel into the sewers to perform maintenance or repair.

(6) Any wastewater of objectionable color or tint not removed in the treatment process, including, but not limited to, dye wastes and vegetable tanning wastes.

(7) Any wastewater of a temperature greater than 66 degrees Celsius, which causes individually or in combination with other wastewater, the influent at the wastewater treatment plant to have a temperature exceeding 40 degrees Celsius.

(8) Any slug load released in a discharge of such volume or strength as to cause interference in the wastewater system. In no case shall a slug load have a flow rate or contain concentrations or quantities of pollutants that exceed, for any time period longer than 30 minutes, more than 5 times the average 24-hour concentrations, quantities, or flow of the user during normal operation.

(9) Any wastewater containing fats, wax, grease, or oils of animal or vegetable origin, whether emulsified or not, in excess of 100 milligrams for each liter, or containing substances which may solidify or become viscous at temperatures between 0 degrees Celsius and 66 degrees Celsius, and any wastes containing oil or grease of petroleum origin.

(10) Wastewater containing inert suspended solids including, but not limited to, fuller's earth, lime slurries and lime residues, or dissolved solids including, but not limited to, sodium chloride and sodium sulfate, in such quantities that they interfere or may interfere with the operation of the wastewater system.

(11) Any substance which causes or may cause the District to violate its NPDES permit, issued pursuant to § 402 of the Act, or the water quality standards of the receiving water.

(12) Any substance which causes or may cause the District's effluent or any other product of the wastewater system, such as sludge and residue, to be unsuitable for reclamation and reuse, or which interferes or may interfere with the reclamation process, or which causes or may cause the District to violate sludge use or disposal regulations developed under § 405 of the Act, other

federal regulations, or sludge regulations of Maryland and Virginia applicable to user jurisdiction discharges to the District.

(13) Any wastewater containing substances which endanger or may endanger health or environment, or cause interference with the wastewater system.

(c) All users shall comply with federal standards, requirements, or limitations on discharges. Should any federal standard, requirement, or limitation conflict with a matter regulated by this subchapter or its implementing regulations, the more stringent standard shall govern.

(d) Storm waters (including snow), surface waters, ground waters, roof runoff, subsurface drainage, cooling waters, or other non-wastewater flow shall be discharged only into those sewers specifically designated as storm or combined sewers, or to a natural outlet. Discharge of any waters into any storm or combined sewer or to a natural outlet is prohibited if the discharge will create a detrimental effect upon the receiving water.

(e) Disposal of radioactive wastes shall comply with the regulations of the Nuclear Regulatory Commission, promulgated March 17, 1965 (31 Fed. R. 4502; 10 CFR, ch. 1).

(f) Unless specifically authorized by the Mayor, no user shall discharge directly into a manhole or catch basin or similar opening in or into a sewer, any substance including, but not limited to, septic tank sludge, restaurant grease, waste or discharge from fuel service stations, or boat holding tank or portable toilet effluent.

(g) The installation of septic tanks and the installation or continuing use of earth pit privies shall be prohibited. Whenever replacement or significant repair to a septic tank or discharge piping is necessary, the user shall notify the District, which shall determine if the tank should be discontinued and the wastewater conducted to the wastewater system.

(h) Increased use of process water or dilution of a discharge shall not constitute either a partial or complete substitute for adequate or necessary pretreatment to achieve compliance with any discharge limitation.

(i) Provisions for storage of any substance in areas draining into a District sewer which, because of actual or potential discharge or leakage from the storage, creates or may create an explosion hazard in, or in any other way have a detrimental effect upon, the wastewater system, or otherwise constitute or pose a hazard to human beings, animals, property, or the receiving waters shall be subject to review by the Mayor, who shall require reasonable safeguards to eliminate or minimize the detrimental effect.

(j) In the case of an accidental discharge, the user shall immediately notify the Mayor of the incident. The notification shall include location of discharge, type of waste, concentration and volume, and corrective actions undertaken or to be undertaken by the user. Within 5 days following an accidental discharge, the user shall submit to the Mayor a detailed written report describing the cause of the discharge and the measures taken or to be taken by the user to prevent similar future occurrences. The notice shall not relieve the user of liability for any expense, loss, or damage which may be incurred or occasioned by damage to the wastewater system, injury to fish, or other damage to

persons, property or the environment caused by the user's act. Compliance with this provision shall not relieve the user of liability for any fines or penalties which may be imposed by this subchapter or other applicable law or regulation. Notices shall be permanently posted on the user's bulletin boards or other prominent places advising employees whom to notify in the event of an accidental discharge. Employers shall ensure that all employees who may cause or discover a discharge are advised of the emergency notification procedures.

(k) All users shall provide wastewater pretreatment necessary to comply with this subchapter. Any facilities required to pretreat wastewater shall be provided, operated, monitored, and maintained at the user's expense. (Jan. 25, 1986, D.C. Law 6-76, § 7, 32 DCR 6478; Mar. 12, 1986, D.C. Law 6-95, § 7, 33 DCR 577.)

Cross references. — As to definition of "Act", see § 6-952.

Legislative history of Law 6-76. — See note to § 6-951.

Legislative history of Law 6-95. — See note to § 6-951.

References in text. — "Section 307 (a) of

the Act", referred to in subsection (b)(4), is 33 U.S.C. § 1317.

"Section 402 of the Act", referred to in subsection (b)(11), is 33 U.S.C. § 1342.

"Section 405 of the Act", referred to in subsection (b)(12), is 33 U.S.C. § 1345.

§ 6-957. Administration.

(a) The Mayor shall administer, implement, and enforce the provisions of this subchapter and ensure compliance with this subchapter through permits, contracts, orders, or other means the Mayor considers necessary. The Mayor is authorized to set and collect fees and charges as may be necessary or appropriate to ensure compliance with this subchapter.

(b) The Mayor shall issue rules to implement the provisions of this subchapter under subchapter I of Chapter 15 of Title 1 and the rules shall include, but not be limited to:

(1) Regulations requiring users to submit information considered necessary by the Mayor to evaluate the user's actual or potential discharge status, including, but not limited to, description of facilities and plant processes, wastewater constituents and characteristics, discharge variations, and mechanical and plumbing plans and details;

(2) Regulations imposing conditions on users, including, but not limited to, limits on new or increased contributions of pollutants, changes in the nature of pollutants discharged, flow regulation or equalization, installation of sampling facilities and specifications for monitoring programs, and installation of pretreatment facilities;

(3) Regulations requiring the development of compliance schedules for the installation of technology required to comply with this subchapter;

(4) Regulations imposing fees to treat high strength wastes as may be defined by the Mayor;

(5) Regulations to effectively and safely dispose of wastes collected in portable collection systems, including, but not limited to, septic tank sludge, restaurant grease, and marine holding tank or portable toilet effluent;

(6) Regulations providing for the issuance and renewal of certificates of water and sewer availability;

(7) Regulations preventing tampering, other misuse, potential, or actual harm to the wastewater system; and

(8) Regulations imposing fees and charges for the issuance of wastewater pretreatment permits and the administration of the pretreatment program that reasonably and fairly meet the costs of the administration of the pretreatment program. (Jan. 25, 1986, D.C. Law 6-76, § 8, 32 DCR 6478; Mar. 12, 1986, D.C. Law 6-95, § 8, 33 DCR 577; Dec. 10, 1987, D.C. Law 7-54, § 2, 34 DCR 6895; Aug. 10, 1988, D.C. Law 7-138, § 2(a)-(d), 35 DCR 4779.)

Legislative history of Law 6-76. — See note to § 6-951.

Legislative history of Law 6-95. — See note to § 6-951.

Legislative history of Law 7-54. — Law 7-54, the “Wastewater System Regulation Amendment Temporary Act of 1987,” was introduced in Council and assigned Bill No. 7-281. The Bill was adopted on first and second readings on July 14, 1987, and September 29, 1987, respectively. Signed by the Mayor on October 16, 1987, it was assigned Act No. 7-87 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-138. — Law 7-138, the “Wastewater System Regulation Amendment Act of 1988,” was introduced in Council and assigned Bill No. 7-278, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on May 17, 1988 and May 31, 1988, respectively. Signed by the Mayor on June 9, 1988, it was assigned Act No. 7-188 and transmitted to both Houses of Congress for its review.

Delegation of authority pursuant to Law 6-95. — See Mayor’s Order 86-88, May 30, 1986.

§ 6-958. Inspection authority.

In order to determine compliance with this subchapter or any rule issued pursuant to this subchapter, the Mayor shall have a right to enter upon or through any premises at reasonable times for the purpose of inspection, observation, measurement, sampling, and testing. Where a user has security measures in force which would require proper identification and clearance before entry, the user shall make necessary security arrangements so that, upon presentation of suitable identification, the Mayor will be permitted entry without delay. (Jan. 25, 1986, D.C. Law 6-76, § 9, 32 DCR 6478; Mar. 12, 1986, D.C. Law 6-95, § 9, 33 DCR 577.)

Legislative history of Law 6-76. — See note to § 6-951.

Legislative history of Law 6-95. — See note to § 6-951.

§ 6-959. Confidential information.

(a) User information and data provided to the District shall be available to the public or to any government agency without restriction unless the user specifically requests and is able to demonstrate to the satisfaction of the Mayor that the release of the information would divulge information, processes, or methods of operation entitled to protection as trade secrets, pursuant to § 1-1524(a)(1).

(b) When requested by the user, information and data which might disclose trade secrets or secret processes shall not be made available for inspection by the public, but shall be made available, upon written request, to governmental

agencies in connection with uses related to this subchapter or to pretreatment programs. This information and data shall be available to the District or to any District agency in judicial review or enforcement proceedings to which the user is a party or in which the user has standing.

(c) Wastewater constituents and characteristics shall not be considered confidential information.

(d) Information accepted by the Mayor as confidential shall not be transmitted to any governmental agency unless written notification is sent to the user at least 10 days before transmitting the information.

(e)(1) All users shall retain and preserve any records, books, documents, memoranda, reports, correspondence, and any summaries of these materials relating to testing, internal or external monitoring, sampling, investigative and chemical analyses made by or in behalf of a user in connection with its discharge for no less than 3 years from the date of preparation, drafting, or memorialization.

(2) All records which pertain to or may pertain to matters which are the subject of enforcement or litigation activities initiated by the District shall be retained and preserved by the user until all the enforcement activities have concluded and all periods of appeal have expired. (Jan. 25, 1986, D.C. Law 6-76, § 10, 32 DCR 6478; Mar. 12, 1986, D.C. Law 6-95, § 10, 33 DCR 577.)

Legislative history of Law 6-76. — See note to § 6-951.

Legislative history of Law 6-95. — See note to § 6-951.

§ 6-960. Enforcement — Appeals.

(a) Whenever the Mayor believes or has reason to believe there is or may be a violation of this subchapter or its implementing rules, in addition to any other enforcement procedure, the Mayor may give written notice of the violation to the person responsible for the violation, and order the person to take corrective measures the Mayor considers reasonable and necessary.

(b) The notice shall state the violation and allow reasonable time for the performance of the necessary corrective measures, consistent with the protection of health, safety, life, property, and the environment.

(c) If a person fails to comply with this notice within the time period stated in the notice, the Mayor shall institute such action as may be necessary to promptly and effectively terminate the violation or to protect life, property, or the environment.

(d) Any person adversely affected by an action taken pursuant to the provisions of this subchapter or the rules promulgated pursuant to this subchapter is entitled to a hearing upon filing with the Mayor a written request for a hearing within 15 days of the date of the action.

(e) The hearing shall be held in accordance with § 1-1509. (Jan. 25, 1986, D.C. Law 6-76, § 11, 32 DCR 6478; Mar. 12, 1986, D.C. Law 6-95, § 11, 33 DCR 577.)

Section references. — This section is referred to in § 6-962.

Legislative history of Law 6-76. — See note to § 6-951.

Legislative history of Law 6-95. — See note to § 6-951.

§ 6-961. Injunction.

Notwithstanding any other provision of this subchapter, the Mayor may authorize appropriate civil action to secure a temporary restraining order, a preliminary or permanent injunction, or declaratory or other appropriate relief to restrain, minimize, halt, or eliminate the violation of, or attempted violation of, any provision of this subchapter or its implementing rules. (Jan. 25, 1986, D.C. Law 6-76, § 12, 32 DCR 6478; Mar. 12, 1986, D.C. Law 6-95, § 12, 33 DCR 577.)

Legislative history of Law 6-76. — See note to § 6-951.

Legislative history of Law 6-95. — See note to § 6-951.

§ 6-962. Emergency suspension of service.

(a) In the event of an actual or threatened discharge to the wastewater system which in the opinion of the Mayor presents or may present an imminent and substantial danger to life, safety, the environment or the operation or integrity of the wastewater system, the Mayor may suspend water service to any user who is or may be responsible for the discharge as is necessary to avoid or abate the danger.

(b) The services shall be restored by the Mayor as soon as practicable after the emergency situation has been corrected.

(c) The Mayor's decision to suspend service may be appealed to the Board of Appeals and Review as set forth in § 6-960.

(d) An appeal of the Mayor's decision shall not stay suspension of service. (Jan. 25, 1986, D.C. Law 6-76, § 13, 32 DCR 6478; Mar. 12, 1986, D.C. Law 6-95, § 13, 33 DCR 577.)

Section references. — This section is referred to in § 6-963.

Legislative history of Law 6-95. — See note to § 6-951.

Legislative history of Law 6-76. — See note to § 6-951.

§ 6-963. Annual publication.

(a) A list of all users charged with significant violations of this subchapter during the preceding 12 months shall be published annually by the Mayor in the largest circulation daily newspaper published in the District.

(b) The notification also shall summarize any enforcement action taken against each violator during the same 12-month period.

(c) For the purpose of this section only, a significant violation is a violation that:

- (1) Remains uncorrected 45 days after notification of noncompliance;
- (2) Is part of a pattern of noncompliance over a 12-month period;
- (3) Involves a failure to report accurately the noncompliance;
- (4) Results in the District exercising its emergency authority under

§ 6-962; or

(5) Is considered significant by the Mayor in light of the circumstances. (Jan. 25, 1986, D.C. Law 6-76, § 14, 32 DCR 6478; Mar. 12, 1986, D.C. Law 6-95, § 14, 33 DCR 577; Aug. 10, 1988, D.C. Law 7-138, § 2(e), (f), 35 DCR 4779.)

Legislative history of Law 6-76. — See note to § 6-951.

Legislative history of Law 7-138. — See note to § 6-957.

Legislative history of Law 6-95. — See note to § 6-951.

§ 6-964. Penalties.

(a) Any person who violates any provision of this subchapter or the rules issued pursuant to this subchapter shall be liable for a civil penalty not exceeding \$1,000 for each day each violation continues.

(b)(1) Notwithstanding any other provision of this subchapter, any person who intentionally, willfully, or recklessly violates any provision of this subchapter or the rules issued pursuant to this subchapter shall be punished by a fine not to exceed \$10,000, imprisonment not to exceed 1 year, or both.

(2) Each day of a violation shall constitute a separate offense, and the penalties described shall be applicable to each of the separate offenses.

(3) All prosecutions under this section shall be in the Superior Court of the District of Columbia in the name of the District of Columbia, and shall be instituted by the Corporation Counsel.

(c) Any person who violates any provision of this subchapter or the rules issued pursuant to this subchapter shall be liable to the District for all expenses, losses, or damages incurred by the District by reason of the violation. (Jan. 25, 1986, D.C. Law 6-76, § 15, 32 DCR 6478; Mar. 12, 1986, D.C. Law 6-95, § 15, 33 DCR 577.)

Cross references. — As to conduct of prosecutions generally, see § 23-101.

Section references. — This section is referred to in § 6-954.

Legislative history of Law 6-76. — See note to § 6-951.

Legislative history of Law 6-95. — See note to § 6-951.

Subchapter V. Restrictions on Phosphate Cleaners.

§ 6-971. Definitions.

For the purposes of this subchapter, the term:

(1) "Cleaning agent" means soaps and detergents used for domestic or commercial cleaning purposes, including the purposes of cleaning fabrics, dishes, eating and cooking utensils, homes, or commercial premises, but the term does not include cosmetics and personal hygiene products like toothpaste, shampoo, and hand soap.

(2) "Trace quantity of phosphorus" means the portion of a cleaning agent, not more than 0.5% of the weight of the cleaning agent, that constitutes all of the phosphorus in the cleaning agent. (Mar. 25, 1986, D.C. Law 6-98, § 2, 33 DCR 723.)

Legislative history of Law 6-98. — Law 6-98, the “Phosphate Soaps and Detergent Restriction Act of 1985,” was introduced in Council and assigned Bill No. 6-212, which was referred to the Committee on Public Works. The Bill was adopted on first and second read-

ings on December 3, 1985, and December 17, 1985, respectively. Signed by the Mayor on January 28, 1986, it was assigned Act No. 6-126 and transmitted to both Houses of Congress for its review.

§ 6-972. Sale and use of phosphate cleaners prohibited; exceptions; manufacturer’s package statement; testing of products for compliance; exemptions for use of noncomplying cleaners; rules and regulations; annual report by Mayor.

(a) Except as provided in subsection (e) of this section, after 180 days after March 25, 1986, no cleaning agent may be used, sold, or furnished in the District of Columbia if it contains a phosphorous compound in a concentration exceeding a trace quantity of phosphorus, except that a cleaning agent with more than a trace quantity of phosphorus may be used for cleaning health care equipment, for use by any commercial or institutional laundry in providing laundry services for a hospital or health care facility; for cleaning food processing equipment, beverage and dairy products handling and processing equipment, and other institutional and industrial applications meeting the requirements of subsection (e) of this section, and designed specifically for cleaning dishes washed in dishwashers.

(b) Except as provided in subsection (e) of this section, after 180 days after March 25, 1986, no cleaning agent for use in dishwashers may be used, sold, or furnished in the District of Columbia if it contains elemental phosphorus exceeding 8.7% by weight.

(c) A manufacturer may state on packages containing the cleaning agent which the manufacturer has produced either of the following:

(1) The percentage of the mass of the cleaning agent comprised of elemental phosphorus according to the chemical weight of the product as compared to the chemical weight of the cleaning agent itself; or

(2) That the cleaning agent conforms to the requirements stated in subsections (a) and (b) of this section.

(d)(1) If a package containing a cleaning agent does not, in writing, present either of the 2 statements suggested in subsection (c) of this section, then the Mayor of the District of Columbia (“Mayor”) shall test the cleaning agent to determine whether it complies with subsection (a) or (b) of this section.

(2) Except as provided in subsection (e) of this section, the Mayor shall prohibit from being marketed in the District of Columbia a cleaning agent that does not conform to this section.

(e) After the Mayor issues rules for applying for and receiving an exemption from the obligations in subsection (a) or (b) of this section, the Mayor may permit the use of cleaning agents that do not comply with subsection (a) or (b) under the following circumstances:

(1) Complying with subsection (a) or (b) of this section would create a significant hardship on the consumers using the cleaning agent;

(2) Complying with subsection (a) or (b) of this section would be unreasonable because an adequate substitute is not available; or

(3) Complying with subsection (a) or (b) of this section would disrupt research clearly designed for scientific purposes and not intended to circumvent the purpose of this subchapter.

(f)(1) The Mayor shall issue rules to implement the provisions of this subchapter pursuant to subchapter I of Chapter 15 of Title 1.

(2) The Mayor shall transmit the rules required by this section to the Council of the District of Columbia ("Council") for a 30-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess, during which the Council may approve or disapprove, in whole or in part, the rules by resolution. If the Council does not approve or disapprove the rules during the 30-day review period, then the rules shall be considered approved at the expiration of the 30 days.

(g) The Mayor shall report annually, in writing, to the Council on March 1 the reasons for and the number of exemptions granted pursuant to this section and shall identify each person or organization granted an exemption by name and address. (Mar. 25, 1986, D.C. Law 6-98, § 3, 33 DCR 723.)

Section references. — This section is referred to in §§ 6-973 and 6-974.

Legislative history of Law 6-98. — See note to § 6-971.

Delegation of authority pursuant to Law 6-98. — See Mayor's Orders 86-102, June 19, 1986; 87-48, February 17, 1987.

§ 6-973. Seller's burden in civil action.

Concerning a civil action against the seller for injuries resulting from violations of this subchapter, a seller has the burden of proving that the cleaning agent complies with § 6-972. (Mar. 25, 1986, D.C. Law 6-98, § 4, 33 DCR 723; Feb. 24, 1987, D.C. Law 6-192, § 6, 33 DCR 7836.)

Legislative history of Law 6-98. — See note to § 6-971.

Legislative history of Law 6-192. — Law 6-192, the "Technical Amendments Act of 1986," was introduced in Council and assigned Bill No. 6-544, which was referred to the Committee

of the Whole. The Bill was adopted on first and second readings on November 5, 1986 and November 18, 1986, respectively. Signed by the Mayor on December 10, 1986, it was assigned Act No. 6-246 and transmitted to both Houses of Congress for its review.

§ 6-974. Criminal prosecutions; penalties for violations of subchapter.

(a) If the Mayor determines that a cleaning agent does not comply with § 6-972(a) or (b) and has not been exempted according to § 6-972(e), then the Mayor shall bring an action for criminal violation of this subchapter in the Superior Court of the District of Columbia.

(b) A person who uses a cleaning agent in violation of this subchapter shall be fined no more than \$15.

(c) A person who offers for sale at retail or furnishes a cleaning agent in violation of this subchapter shall be subject to a fine, upon conviction, not to exceed \$500 for the 1st offense and a fine not to exceed \$1,000 for the second and subsequent offenses.

(d) The Mayor may seize any cleaning agent held for sale in violation of this subchapter. Cleaning agents seized under this subsection shall be forfeited to the District of Columbia.

(e) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this subchapter, or any rules or regulations issued under the authority of this subchapter, pursuant to Chapter 27 of this title. Adjudication of any infraction of this subchapter shall be pursuant to Chapter 27 of this title. (Mar. 25, 1986, D.C. Law 6-98, § 5, 33 DCR 723; Mar. 8, 1991, D.C. Law 8-237, § 17, 38 DCR 314.)

Legislative history of Law 6-98. — See note to § 6-971.

Legislative history of Law 8-237. — Law 8-237, the “Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985 Technical and Clarifying Amendments Act of 1990,” was introduced in Council and assigned Bill No. 8-203, which was referred to the Committee on Consumer and Regulatory Affairs.

The Bill was adopted on first and second readings on December 4, 1990, and December 18, 1990, respectively. Signed by the Mayor on December 27, 1990, it was assigned Act No. 8-320 and transmitted to both Houses of Congress for its review.

Delegation of authority pursuant to Law 6-98. — See Mayor’s Order 87-48, February 17, 1987.

Subchapter VI. Environmental Impact Statements.

§ 6-981. Purpose.

The purpose of this subchapter is to promote the health, safety and welfare of District of Columbia (“District”) residents, to afford the fullest possible preservation and protection of the environment through a requirement that the environmental impact of proposed District government and privately initiated actions be examined before implementation and to require the Mayor, board, commission, or authority to substitute or require an applicant to substitute an alternative action or mitigating measures for a proposed action, if the alternative action or mitigating measures will accomplish the same purposes as the proposed action with minimized or no adverse environmental effects. (Oct. 18, 1989, D.C. Law 8-36, § 2, 36 DCR 5741.)

Legislative history of Law 8-36. — Law 8-36, the “District of Columbia Environmental Policy Act of 1989,” was introduced in Council and assigned Bill No. 8-8, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on June 27, 1989 and July 11, 1989, respectively. Signed by the Mayor on July 27, 1989, it was assigned

Act No. 8-65 and transmitted to both Houses of Congress for its review.

Delegation of Authority Pursuant to D.C. Law 8-36. — See Mayor’s Order 92-151, December 1, 1992.

Cited in *Glenbrook Rd. Ass’n v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 605 A.2d 22 (1992).

§ 6-982. Definitions.

For the purposes of this subchapter, the term:

(1) “Action” means (A) a new project or activity directly undertaken by the Mayor or a board, commission, or authority of the District government or (B) a project or activity that involves the issuance of a lease, permit, license, certificate, other entitlement, or permission to act by an agency of the District government.

(2) "Major action" means any action that costs over \$1,000,000 and that may have a significant impact on the environment, except that, subject to the exemptions in § 6-986, the Mayor, pursuant to rules issued in accordance with § 6-989, shall classify any action that costs less than \$1,000,000 as a major action, if the action imminently and substantially affects the public health, safety, or welfare. The cost level of \$1,000,000 shall be based on 1989 dollars adjusted annually according to the Consumer Price Index.

(3) "Environment" means the physical conditions that will be affected by a proposed action, including but not limited to, the land, air, water, minerals, flora and fauna.

(4) "Hazardous substance" means any solid, liquid, gaseous, or semisolid form or combination that, because of its nature, concentration, physical, chemical, or infectious characteristic, as established by the Mayor, may:

(A) Cause or significantly contribute to an increase in mortality or an increase in a serious, irreversible or incapacitating reversible illness; or

(B) Pose a substantial hazard to human health or the environment if improperly treated, stored, transported, disposed of, or otherwise managed, including substances that are toxic, carcinogenic, flammable, irritants, strong sensitizers, or that generate pressure through decomposition, heat, or other means and containers and receptacles previously used in the transportation, storage, use, or application of hazardous substances.

(5) "Lead agency" means the District agency designated by the Mayor to have primary responsibility for the preparation of an Environmental Impact Statement ("EIS").

(6) "Functional equivalent" means the full and adequate description and analysis of the environmental impact of a proposed action by an agency, board, commission, or authority of the District government that examines or imposes environmental controls under procedures that provide for notice, opportunity for public comment, and the creation of a reviewable record. (Oct. 18, 1989, D.C. Law 8-36, § 3, 36 DCR 5741.)

Legislative history of Law 8-36. — See note to § 6-981.

§ 6-983. Environmental Impact Statement requirements.

(a) Whenever the Mayor or a board, commission, authority, or person proposes or approves a major action that is likely to have substantial negative impact on the environment, if implemented, the Mayor, board, commission, authority, or person shall prepare or cause to be prepared, and transmit, in accordance with subsection (b) of this section, a detailed EIS at least 60 days prior to implementation of the proposed major action, unless the Mayor determines that the proposed major action has been or is subject to the functional equivalent of an EIS. The EIS shall be written in a concise manner. The EIS shall describe and, where appropriate, analyze:

(1) The goals and nature of the proposed major action and its environment;

(2) The relationship of the proposed major action to the goals of the adopted Comprehensive Plan, requirements as promulgated by the Zoning Commission, and any District or federal environmental standards;

(3) Any adverse environmental impact that cannot be avoided if the proposed major action is implemented;

(4) Alternatives to the proposed major action, including alternative locations and the adverse and beneficial effects of the alternatives;

(5) Any irreversible and irretrievable commitment of resources involved in the implementation of the proposed major action;

(6) Mitigation measures proposed to minimize any adverse environmental impact;

(7) The impact of the proposed major action on the use and conservation of energy resources, if applicable and significant;

(8) The cumulative impact of the major action when considered in conjunction with other proposed actions;

(9) The environmental effect of future expansion or action, if expansion or action is a reasonably foreseeable consequence of the initial major action and the future expansion or action will likely change the scope or nature of the initial major action or its environmental effects;

(10) Responses to comments provided by the Council, any affected Advisory Neighborhood Commission, and interested members of the public; and

(11) Any additional information that the Mayor or a board, commission, or authority determines to be helpful in assessing the environmental impact of any proposed major action and the suggested alternatives.

(b) The Mayor, board, commission, or authority shall transmit a copy of any EIS prepared pursuant to subsection (a) of this section to the Council, any District agency that has responsibility for implementing the major action or special expertise with respect to any environmental impact involved, and any affected Advisory Neighborhood Commission. A copy of the EIS shall be made available for review by the public in the main office of the agency primarily responsible for implementing or permitting the proposed major action. The Mayor, board, commission, or authority shall provide a reasonable period consistent with subchapter I of Chapter 15 of Title 1, for comment on any EIS required to be prepared pursuant to subsection (a) of this section. If 25 registered voters in an affected single member district request a public hearing on an EIS or supplemental EIS or there is significant public interest, the Mayor, board, commission, or authority shall conduct a public hearing pursuant to the rules issued in accordance with § 6-989(a).

(c)(1) The Mayor, board, agency, commission, or authority of the District government shall determine within 30 days, excluding Saturdays, Sundays, and legal holidays, of receipt of an application for a proposed major action whether an EIS is required, if the action involves the grant or issuance of a lease, permit, license, certificate, or other entitlement by a District agency.

(2) If the Mayor, or a board, commission, or authority of the District government determines that an EIS is not required for a major action that is likely to involve the creation, use, transportation, storage, or disposal of a hazardous substance, the Mayor shall prepare, make available for public

inspection, and transmit to the Council a written determination that describes why an EIS is not required prior to the grant or issuance of any applicable lease, permit, license, certificate, entitlement, or permission to act.

(3) If the major action involves the grant or issuance to an applicant of a lease, permit, license, certificate, or other entitlement by a District agency:

(A) The agency shall notify the applicant, in writing, if a determination has been made that an EIS is required. Notice of the determination and the findings that support the determination shall be kept on file by the Mayor.

(B) The Mayor, board, commission, or authority may require an applicant to prepare an EIS. A nongovernmental applicant shall be charged a fee to cover the cost of agency review of the EIS. No lease, permit, license, certificate, or other entitlement shall be issued, unless the applicant required to prepare an EIS has completed the EIS in compliance with this subchapter and paid any fee charged pursuant to this paragraph.

(C) The applicant shall assist the Mayor, or the board, commission, or authority at any stage of the review of the proposed major action by timely submitting all relevant information concerning impact, costs, benefits, and alternatives. The Mayor, board, commission, or authority shall deny a proposed action, if the applicant fails to submit relevant information as specified in rules promulgated pursuant to § 6-989. (Oct. 18, 1989, D.C. Law 8-36, § 4, 36 DCR 5741.)

Legislative history of Law 8-36. — See note to § 6-981.

Impact statement not necessary. — An environmental impact statement assessing the applicant's proposed use of the property was not needed because the applicant's appeal to

the Board of Zoning Adjustment sought only a ruling that the proposed use could occur as a matter of right. *Concerned Citizens v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 634 A.2d 1234 (1993).

§ 6-984. Adverse impact findings.

If the EIS identifies an adverse effect from a proposed major action and contains a finding that the public health, safety, or welfare is imminently and substantially endangered by the action, the Mayor, board, commission, or authority of the District government shall disapprove the action, unless the applicant proposes mitigating measures or substitutes a reasonable alternative to avoid the danger. (Oct. 18, 1989, D.C. Law 8-36, § 5, 36 DCR 5741.)

Legislative history of Law 8-36. — See note to § 6-981.

§ 6-985. Supplemental EIS.

(a) The Mayor, or a board, commission, authority, or person shall prepare a supplemental EIS if:

(1) The agency or applicant makes or proposes a substantial change in the proposed action that is relevant to environmental concerns; or

(2) There are significant new circumstances or information relevant to environmental concerns that affect the proposed action or the impact of the proposed action.

(b) The supplemental EIS shall be prepared, transmitted, and funded in accordance with the requirements of § 6-983. (Oct. 18, 1989, D.C. Law 8-36, § 6, 36 DCR 5741.)

Legislative history of Law 8-36. — See note to § 6-981.

§ 6-986. Exemptions.

(a) No EIS shall be required by this subchapter with respect to an action:

(1) For which an EIS has been prepared in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. § 4321 et seq.) ("NEPA"), and its implementing regulations, or a determination has been made under NEPA and its implementing regulations that no impact statement is required due to a finding of no significant impact or a finding that the proposed action is categorically excluded from consideration;

(2) For which a request has been made for the authorization or allocation of funds for a project that involves only a feasibility or planning study for a possible future action that has not been approved, adopted, or funded. The study, however, shall include consideration of environmental factors;

(3) Whose impact on the environment has been considered in the functional equivalent of an EIS;

(4) That has reached a critical stage of completion prior to October 18, 1989 and the cost of altering or abandoning the action for environmental reasons outweighs the benefits derived from the action;

(5) Of an environmentally protective regulatory nature;

(6) Exempted by rules approved pursuant to § 6-989(a);

(7) Within the Central Employment Area as defined in the Zoning Regulations of the District of Columbia; or

(8) For which a lease, permit, certificate, or any other entitlement or permission to act by a District government agency has been approved before December 31, 1989.

(b) The Mayor or a board, commission, authority, or person shall prepare a supplemental EIS for any action exempted pursuant to subsection (a)(1) or (a)(3) of this section, if a substantial and relevant question remains with regard to the impact of the action on the environment that would otherwise be addressed in an EIS prepared in accordance with this subchapter. (Oct. 18, 1989, D.C. Law 8-36, § 7, 36 DCR 5741.)

Temporary amendment of section. — Section 12 of D.C. Law 10-251 added an (a)(9) to read as follows:

"(a) No EIS shall be required by this subchapter with respect to an action:

* * * * *

"(9) Granting an interim operating permit to an existing solid waste facility pursuant to section 4(b) of the Solid Waste Facility Permit Emergency Amendment Act of 1994 and section 4(b) of the Solid Waste Permit Temporary Act of 1994."

Section 16(b) of D.C. Law 10-251 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Solid Waste Facility Permit Amendment Act of 1995, whichever occurs first.

Emergency act amendments. — For temporary amendment of section, see § 12 of the Solid Waste Facility Permit Emergency Act of 1994 (D.C. Act 10-384, December 28, 1994, 42 DCR 45).

Legislative history of Law 8-36. — See note to § 6-981.

Legislative history of Law 10-251. — Law 10-251, the “Solid Waste Facility Permit Temporary Act of 1994,” was introduced in Council and assigned Bill No. 10-835. The Bill was adopted on first and second readings on December 6, 1994, and January 3, 1995, respectively. Signed by the Mayor on January 18, 1995, it

was assigned Act No. 10-398 and transmitted to both Houses of Congress for its review. D.C. Law 10-251 became effective on March 23, 1995.

Cited in *Glenbrook Rd. Ass’n v. District of Columbia Bd. of Zoning Adjustment*, App. D.C., 605 A.2d 22 (1992).

§ 6-987. Lead agencies; files.

(a) The Mayor shall designate a lead agency to prepare an EIS or supplemental EIS when the preparation of the EIS requires the input of more than 1 agency. The lead agency shall, if necessary, oversee the preparation of a single, omnibus EIS, ensure reasoned consideration of and distinction among any inconsistent conclusions, and promote coordination with public and private organizations and individuals with a special expertise or recognized interest.

(b) The Mayor shall maintain a file of all EIS’s and supplemental EIS’s for public review. (Oct. 18, 1989, D.C. Law 8-36, § 8, 36 DCR 5741.)

Legislative history of Law 8-36. — See note to § 6-981.

§ 6-988. Judicial review.

Where an EIS is prepared in connection with the issuance or approval of a lease, permit, license, certificate, or any other entitlement or permission to act by a District government agency that is subject to administrative or judicial review under applicable laws or regulations, the administrative or judicial review shall be governed by the applicable laws and regulations. (Oct. 18, 1989, D.C. Law 8-36, § 9, 36 DCR 5741.)

Legislative history of Law 8-36. — See note to § 6-981.

§ 6-989. Rules.

(a) Within 180 days of October 18, 1989, the Mayor shall, pursuant to subchapter I of Chapter 15 of Title 1, issue proposed rules to implement the provisions of this subchapter, including rules that establish categorical exemptions for major actions that would have no significant impact on the environment. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved.

(b) Within 180 days of October 18, 1989, the Department of Consumer and Regulatory Affairs shall issue rules to assist District agencies in the preparation of an EIS, pursuant to subchapter I of Chapter 15 of Title 1. (Oct. 18, 1989, D.C. Law 8-36, § 10, 36 DCR 5741.)

Legislative history of Law 8-36. — See note to § 6-981.

Approval and disapproval of proposed Environmental Policy Act rules. — Pursuant to Resolution 8-314, the “District of Columbia Environmental Policy Act of 1989 Proposed

Rulemaking Approval & Disapproval Resolution of 1990,” effective December 21, 1990, the Council approved, in part, and disapproved, in part, the proposed rules to implement the District of Columbia Environmental Policy Act of 1989.

§ 6-990. Construction.

Nothing in this subchapter shall be construed to supercede the requirements of District government zoning statutes and regulations or federal and District government environmental statutes or regulations. (Oct. 18, 1989, D.C. Law 8-36, § 11, 36 DCR 5741.)

Legislative history of Law 8-36. — See note to § 6-981.

Subchapter VII. Asbestos Licensing and Control.

§ 6-991.1. Definitions.

For purposes of this subchapter, the term:

(1) “Asbestos” means any material that contains more than 1% by weight of an asbestiform variety of serpentinite or chrysotile, riebeckite or crocidolite, cummingtonite, grunerite, anthophyllite, or tremolite.

(2) “Asbestos abatement” means the removal, encapsulation, enclosure, disposal, or transportation of asbestos or material that contains asbestos.

(3) “Business entity” means a partnership, firm, association, corporation, or sole proprietorship that is engaged in asbestos abatement.

(4) “Asbestos worker” means a person who is engaged in asbestos abatement.

(5) “Demolition” means to wreck or remove a load-supporting structural member of a facility or handling operation.

(6) “Encapsulate” means to coat, bind, or resurface a wall, ceiling, pipe, or other structure to prevent friable asbestos or material that contains asbestos from becoming airborne.

(7) “Friable asbestos material” means any material that can be crumbled, pulverized, reduced to powder by hand pressure, or that emits or can be expected to emit fibers into the air under normal use or maintenance.

(8) “Mayor” means the Mayor of the District of Columbia.

(9) “Person” means an individual or nonbusiness entity, including a District of Columbia (“District”) government employee.

(10) “Structural member” means a load-supporting member, including a beam or load-supporting wall, or any non-supporting member, including a ceiling or nonload-supporting wall. (May 1, 1990, D.C. Law 8-116, § 2, 37 DCR 1641.)

Legislative history of Law 8-116. — Law 8-116, the “Asbestos Licensing and Control Act of 1990,” was introduced in Council and assigned Bill No. 8-131, which was referred to the

Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on January 30, 1990, and February 13, 1990, respectively. Signed by the Mayor on

February 28, 1990, it was assigned Act No. 8-170 and transmitted to both Houses of Congress for its review.

Delegation of Authority Under D.C. Act

8-116, the District of Columbia Asbestos Licensing and Control Act of 1990. — See Mayor's Order 92-152, December 1, 1992.

§ 6-991.2. Asbestos worker license.

(a) To obtain a license as an asbestos worker, a person shall:

(1) Successfully complete a course of instruction on asbestos abatement that has been approved by the Mayor;

(2) Meet any other standard required by the Mayor or by the federal government; and

(3) Submit a completed application form with the required application fee to the Mayor.

(b) An asbestos worker license shall expire 2 years from the date of issuance. A license may be renewed for additional 2-year periods if the asbestos worker submits a renewal application with the renewal fee to the Mayor. (May 1, 1990, D.C. Law 8-116, § 3, 37 DCR 1641.)

Legislative history of Law 8-116. — See note to § 6-991.1.

§ 6-991.3. Business entity license and permit.

(a) To obtain or renew a license to engage in asbestos abatement, a business entity shall:

(1) Train employees and agents to comply with federal standards for asbestos abatement;

(2) Certify that employees and agents have completed a course of instruction on asbestos abatement that has been approved by the Mayor;

(3) Provide certification to the Mayor that the business entity is able to comply with all applicable federal standards for asbestos abatement and all applicable District environmental, safety, and health laws or rules;

(4) Provide certification to the Mayor that the business entity has access to an approved asbestos disposal site to deposit any asbestos waste that the business entity generates during the term of the license;

(5) Utilize only licensed asbestos workers;

(6) Provide certification to the Mayor that the business entity will use appropriate equipment and materials;

(7) Provide the Mayor with a copy of the respiratory protection program of the business entity;

(8) Provide evidence of a license to haul asbestos or material that contains asbestos or of an agreement with a commercial hauler who is licensed to transport asbestos or material that contains asbestos;

(9) Provide disclosure to the Mayor of any violation of applicable federal or District environmental, safety, health, licensing, or construction code law, rule, or regulation relating to asbestos abatement for which the business entity has been cited, and provide certification to the Mayor that any penalty or fee assessed to the business entity by a federal or District agency has been paid in full; and

(10) Meet any other standards that the Mayor deems necessary.

(b) A license for a business entity to engage in asbestos abatement shall expire 2 years from the date of issuance. A license may be renewed for 2-year periods if the business entity submits a renewal application with the renewal fee to the Mayor.

(c) A business entity shall apply for a permit prior to the commencement of each asbestos abatement project. Before a permit may be issued, the business entity must demonstrate that the business entity will perform the work in compliance with the Construction Code, this subchapter, and rules issued pursuant to this subchapter. (May 1, 1990, D.C. Law 8-116, § 4, 37 DCR 1641.)

Legislative history of Law 8-116. — See note to § 6-991.1.

§ 6-991.4. Prohibitions.

(a) Except as provided in subsection (b) and (c) of this section, no business entity shall engage in the abatement of asbestos or material that contains asbestos without a permit and license that is issued by the Mayor. No person shall undertake or be employed on an asbestos abatement project unless the person is licensed as an asbestos worker by the Mayor.

(b) The Mayor, by rule, may waive the requirements for a license or permit in the case of an emergency that involves asbestos or material that contains asbestos if the emergency poses a threat to the public health or safety of the District.

(c)(1) The asbestos worker license, business entity license and permit, and recordkeeping requirements of this subchapter shall not apply to any removal or other activity involving resilient floor covering materials, including sheet vinyl, resilient tile, and associated adhesives, provided that the business entity or persons performing the removal:

(A) Follow the resilient floor covering manufacturers' recommended work practices for removal;

(B) Are not required to obtain asbestos accreditation under applicable federal asbestos requirements and regulations promulgated by the United States Environmental Protection Agency; and

(C) For removals involving more than 18 square feet of resilient floor covering material, notify the Mayor in writing at least 10 days prior to the removal of the time, place, and entity performing the removal, and certify that asbestos accreditation is not required under subparagraph (B) of this paragraph.

(2) Any other asbestos requirements promulgated by the Mayor shall treat removals and other activity involving resilient floor covering materials in the same manner as prescribed under applicable federal asbestos requirements, including the National Emission Standard for Hazardous Air Pollutants for Asbestos as promulgated by the United States Environmental Protection Agency. (May 1, 1990, D.C. Law 8-116, § 5, 37 DCR 1641; Oct. 15, 1993, D.C. Law 10-37, § 2(a), 40 DCR 5817.)

Section references. — This section is referred to in § 6-991.9.

Effect of amendments. — D.C. Law 10-37 substituted “subsections (b) and (c)” for “subsection (b)” in the first sentence of (a); and added (c).

Legislative history of Law 8-116. — See note to § 6-991.1.

Legislative history of Law 10-37. — D.C. Law 10-37, the “Asbestos Licensing and Con-

trol Act of 1990 Amendment Act of 1993,” was introduced in Council and assigned Bill No. 10-138, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on July 29, 1993, it was assigned Act No. 10-70 and transmitted to both Houses of Congress for its review. D.C. Law 10-37 became effective on October 15, 1993.

§ 6-991.5. Inspection and investigation.

The Mayor is authorized to conduct an on-site inspection of any asbestos abatement project to determine compliance with all federal and District laws or rules applicable to asbestos abatement. The Mayor is authorized to investigate any report of noncompliance with the federal and District laws or rules applicable to asbestos abatement. (May 1, 1990, D.C. Law 8-116, § 6, 37 DCR 1641.)

Legislative history of Law 8-116. — See note to § 6-991.1.

§ 6-991.6. Reprimands; suspensions; revocations.

The Mayor may reprimand an asbestos worker or business entity or suspend or revoke the license or permit of an asbestos worker or business entity, pursuant to § 1-1509, if the asbestos worker or business entity:

- (1) Attempts to remove or encapsulate asbestos or material that contains asbestos without a license or permit required under this subchapter;
- (2) Fraudulently or deceptively obtains or attempts to obtain a license or permit;
- (3) Violates any provision of this subchapter or any rule promulgated pursuant to this subchapter; or
- (4) Fails to meet any applicable federal or District standard for asbestos abatement. (May 1, 1990, D.C. Law 8-116, § 7, 37 DCR 1641.)

Legislative history of Law 8-116. — See note to § 6-991.1.

§ 6-991.7. Summary action.

(a) If the Mayor determines that the conduct of an asbestos worker or business entity presents an imminent danger to the public health or safety of the residents of the District, the Mayor may suspend or restrict the license or permit of the asbestos worker or business entity prior to a hearing.

(b) At the time of the suspension or restriction of a license or permit, the Mayor shall provide the asbestos worker or business entity with written notice that states the action that is being taken, the basis for the action, and the right of the asbestos worker or business entity to request a hearing.

(c) An asbestos worker or business entity shall have the right to request a hearing within 3 days of service of notice of the suspension or restriction of the

license or permit. The Mayor shall hold a hearing within 3 days of receipt of a timely request and shall issue a decision within 3 days of the hearing.

(d) The Mayor shall inform the asbestos worker or business entity of the decision in writing and provide findings of fact and conclusions of law. The findings shall be supported by reliable, probative, and substantial evidence. The Mayor shall provide a copy of the decision to each party to a case or to the party's attorney of record.

(e) Any person aggrieved by a decision pursuant to this section may file an appeal with the Mayor within 10 days of the decision. (May 1, 1990, D.C. Law 8-116, § 8, 37 DCR 1641.)

Legislative history of Law 8-116. — See note to § 6-991.1.

§ 6-991.8. Cease and desist order.

If the Mayor determines that a hazardous condition exists that may endanger the public health or safety of the District of Columbia due to noncompliance with federal or District laws or rules on asbestos abatement, the Mayor may issue a cease and desist order to require a violator to cease asbestos abatement operations immediately, remove asbestos workers from the asbestos abatement project area, evacuate appropriate areas of the asbestos abatement project site, or take emergency measures necessary to contain the hazardous condition. Any business entity subject to a cease and desist order may appeal the order within 15 days, but is required to comply with the order pending appeal. (May 1, 1990, D.C. Law 8-116, § 9, 37 DCR 1641.)

Legislative history of Law 8-116. — See note to § 6-991.1.

§ 6-991.9. Criminal action.

A person who willfully violates § 6-991.4 is guilty of a misdemeanor, and, upon conviction, shall be fined not more than \$5,000 for the 1st offense or \$10,000 for the 2nd or subsequent offense, imprisoned for not more than 1 year, or both. Each day that a violation continues is a separate violation under this subchapter. (May 1, 1990, D.C. Law 8-116, § 10, 37 DCR 1641.)

Legislative history of Law 8-116. — See note to § 6-991.1.

§ 6-991.10. Civil infractions.

Civil fines, penalties, and fees may be imposed as sanctions for any infraction of the provisions of this subchapter, or the rules authorized by this subchapter, pursuant to Chapter 27 of this title. (May 1, 1990, D.C. Law 8-116, § 11, 37 DCR 1641.)

Legislative history of Law 8-116. — See note to § 6-991.1.

§ 6-991.11. Records to be kept by a business entity.

(a) A business entity that is engaged in asbestos abatement shall keep a record of each asbestos abatement project and make the record available to the Mayor.

(b) The records shall include:

(1) The name and address of the person who supervised the asbestos abatement project;

(2) The location of and a description of the asbestos abatement project;

(3) The amount of asbestos or material that contains asbestos that was involved in the asbestos abatement project;

(4) The commencement and completion date of the asbestos abatement project;

(5) A summary of the procedures that were used to comply with all applicable District and federal standards for asbestos abatement;

(6) The name and address of each asbestos disposal site that was used in the asbestos abatement project;

(7) The location, date, and description of any fiber release episodes;

(8) A report of any air sampling, including the location, date, method used, results, and the name and address of any worker who performed the air sampling;

(9) Information that relates to asbestos worker training and licensing;

(10) The name and address of a certified laboratory that is independent of the business entity and that will conduct analysis of bulk, dust, or air samples during an asbestos abatement project, and the name and address of the owner of the building in which the asbestos abatement project is being conducted; and

(11) Any other information that the Mayor deems necessary.

(c) The business entity or any successor or assignee shall maintain the records required by this section for not less than 30 years. (May 1, 1990, D.C. Law 8-116, § 12, 37 DCR 1641.)

Legislative history of Law 8-116. — See note to § 6-991.1.

§ 6-991.12. Mayor's responsibilities.

(a) The Mayor shall make available application forms for asbestos abatement licenses to business entities. The application form shall:

(1) Request the name and address of the business entity;

(2) Request a description of the protective clothing and respirators to be used by the business entity and the procedure for use of the protective clothing and respirators;

(3) Request the name and address of each asbestos disposal site to be used;

(4) Request a description of the site decontamination procedures to be used;

- (5) Request a description of the asbestos abatement methods to be used by the business entity;
 - (6) Request a description of the procedure to be used to handle waste that contains asbestos;
 - (7) Request a description of the procedure to be used to monitor the air;
 - (8) Request a description of the final cleanup procedure to be used;
 - (9) Request the signature of the chief executive officer of the business entity or his or her agent;
 - (10) Request evidence that any person to be utilized on an asbestos abatement project is a licensed asbestos worker;
 - (11) Outline procedures for the business entity to follow to certify that the business entity is able to comply with applicable federal standards for asbestos abatement and District environmental, safety, or health laws or rules;
 - (12) Outline procedures for the business entity to follow to certify that the business entity will use appropriate equipment and materials;
 - (13) Outline procedures for the business entity to follow to certify that the business entity has access to an approved asbestos disposal site; and
 - (14) Request any other information that the Mayor deems necessary.
- (b) Prior to expiration of a license for an asbestos worker or for asbestos abatement by a business entity, the Mayor shall send to an asbestos worker or business entity a renewal notice that states:
- (1) The expiration date of the current license;
 - (2) The date that the renewal application must be received by the Mayor for the renewal license to be issued and mailed to the asbestos worker or business entity before the current license expires; and
 - (3) The amount of the renewal fee. (May 1, 1990, D.C. Law 8-116, § 13, 37 DCR 1641.)

Legislative history of Law 8-116. — See note to § 6-991.1.

§ 6-991.13. Rules.

- (a) Within 180 days of May 1, 1990, the Mayor shall submit proposed rules on the control of asbestos and materials that contain asbestos to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within the 45-day review period, the proposed rules shall be deemed effective. The Mayor shall submit any amendment to the proposed rules to the Council for a 45-day period of review pursuant to this section.
- (b) The proposed rules shall include, but not be limited to, the following:
- (1) Criteria for the display of caution signs at an asbestos abatement project site;
 - (2) Requirements for wetting asbestos material;
 - (3) Requirements for the disposal of asbestos or material that contains asbestos;

(4) Requirements to clean and monitor an asbestos abatement project site where abatement has occurred;

(5) Requirements to enclose and seal materials used in an asbestos abatement project;

(6) Asbestos control procedures for demolition and renovation projects;

(7) Appropriate exemption standards and alternative procedures for removal, including the use of resilient floor covering manufacturers' recommended work practices for the handling and removal of resilient floor covering materials;

(8) A schedule of license and permit fees;

(9) Criteria for asbestos health and safety training courses;

(10) Continuing education requirements for asbestos workers, supervisory asbestos workers, or contractors that are engaged in asbestos abatement;

(11) Reciprocity and endorsement provisions;

(12) Procedures to notify the public that an asbestos abatement project is about to commence;

(13) Requirements for asbestos worker protection, including provisions that require a business entity to:

(A) Submit to the Mayor a copy of the federally required respiratory protection program;

(B) Ensure that workers complete a training course on asbestos abatement that includes, but is not limited to, recognition of asbestos health hazards to the public, and federal and District asbestos requirements;

(C) Certify to the Mayor that the business entity provides workers with protective clothing and equipment; and

(14) Requirements that provide protection of occupants of a building affected by an asbestos abatement project, including but not limited to, provisions that require:

(A) Certification that the level of asbestos fibers in affected units after an asbestos project is not more than .01 fibers per cubic centimeter;

(B) Certification by the business entity and District inspectors that the techniques used during the asbestos abatement project are safe and that an affected unit is safe for rehabilitation; and

(C) Procedures for the notification and education of occupants not less than 30 days prior to the commencement of an asbestos abatement project of the health or safety reasons that necessitate the asbestos abatement project and the procedures, including alternate accommodations and protection of belongings, that will be used to protect the health and safety of occupants of affected units. (May 1, 1990, D.C. Law 8-116, § 14, 37 DCR 1641; Oct. 15, 1993, D.C. Law 10-37, § 2(b), 40 DCR 5817; _____, 1995, D.C. Law 10- (Act 10-302), § 9, 41 DCR 5193.)

Effect of amendments. — D.C. Law 10-37 added "including the use of resilient floor covering manufacturers' recommended work practices for the handling and removal of resilient floor covering materials" at the end of (b)(7).

D.C. Law 10- (Act 10-302) validated a previously made change in (b)(7).

Legislative history of Law 8-116. — See note to § 6-991.1.

Legislative history of Law 10-37. — See note to § 6-991.4.

Legislative history of Law 10- (Act 10-302). — Law 10- (Act 10-302), the "Technical Amendments Act of 1994," was introduced in

Council and assigned Bill No. 10-673, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on July 25, 1994, it

was assigned Act No. 10-302 and transmitted to both Houses of Congress for its review. D.C. Law 10- (Act 10-302) is projected to become law May 25, 1995.

§ 6-991.14. Remedies cumulative.

The remedies provided for in this subchapter are cumulative of remedies already provided in law. (May 1, 1990, D.C. Law 8-116, § 15, 37 DCR 1641.)

Legislative history of Law 8-116. — See note to § 6-991.1.

Subchapter VIII. Underground Storage Tank Management.

§ 6-995.1. Definitions.

For the purposes of this subchapter, the term:

(1) “Facility” means 1 or more underground storage tanks at a given location.

(2) “Guarantor” means any person, other than the owner or operator, who provides evidence of financial responsibility for the underground storage tank facility.

(3) “Operator” means any person in control of, or having responsibility for, the daily operation of a facility.

(4) “Owner” means:

(A) In the case of an underground storage tank in use on or after November 8, 1984, any person who owns an underground storage tank used for the storage, use, or dispensing of regulated substances; or

(B) In the case of any underground storage tank in use before November 8, 1984, but no longer in use on that date, any person who owned a tank immediately before discontinuation of its use.

(5) “Person” means any individual, partnership, corporation (including a government corporation), trust, firm, joint stock company, association, consortium, joint venture, commercial entity, state, municipality, commission, political subdivision of a state, the District of Columbia (“District”) government, the United States government, a foreign government, or any interstate body.

(6) “Petroleum” means petroleum, including crude oil or any fraction of crude oil, that is liquid at standard conditions of temperature and pressure of 60 degrees Fahrenheit and 14.7 pounds per square inch absolute.

(7) “Regulated substance” means:

(A) Any substance defined in section 101(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, approved December 11, 1980 (94 Stat. 2767; 42 U.S.C. 9601(14)). The term “regulated substance” shall not include any substance regulated as a hazardous waste under subtitle C of title II of the Solid Waste Disposal Act, approved October 21, 1976 (90 Stat. 2806; 42 U.S.C. 6921 et seq.);

(B) Petroleum; or

(C) Any other substance designated by the Mayor in accordance with rules issued pursuant to § 6-995.12.

(8) "Release" means any spill, leak, emission, discharge, escape, leach, or disposal from an underground storage tank.

(9)(A) "Responsible party" means:

- (i) An owner or operator as defined in this section;
- (ii) A person who caused or contributed to a release from an underground storage tank system;
- (iii) A person who caused a release as a result of transfer of a regulated substance to or from an underground storage tank system;
- (iv) A person found to be negligent, including any person who previously owned or operated an underground storage tank or facility, or who arranged for or agreed to the placement of an underground storage tank system by agreement or otherwise; or
- (v) The owner of real property where an underground storage tank is or was located or where contamination from an underground storage tank is discovered if the owner or operator of the tank as defined in paragraphs 3 and 4 cannot be located or is insolvent, or, if the real property owner refuses without good cause to permit the owner or operator of the tank access to the property to investigate or remediate the site.

(B) If the owner and operator of a petroleum underground storage tank are separate persons, only the owner shall be required to demonstrate financial responsibility. Both the owner and operator shall be liable in the event of noncompliance with the requirements of 40 CFR 280.90 et seq.

(10) "Underground storage tank" means 1 or any combination of tanks, including underground pipes that connect tanks, that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of the underground pipes connected thereto) is 10% or more beneath the surface of the ground. "Underground storage tank" does not mean a tank that is exempted in accordance with rules issued pursuant to § 6-995.12. (Mar. 8, 1991, D.C. Law 8-242, § 2, 38 DCR 344; Sept. 29, 1992, D.C. Law 9-159, § 2(a), 39 DCR 5690.)

Effect of amendments. — D.C. Law 9-159 in (3) deleted "and includes: (A) In the case of an underground storage tank in use on or after November 8, 1984, any person who owns an underground storage tank used for the storage, use, or dispensing of regulated substances; or (B) In the case of any underground storage tank in use before November 8, 1984, but no longer in use on that date, any person who owned a tank immediately before discontinuation of its use" following "facility"; inserted (4); and added (9)(A)(v).

Legislative history of Law 8-242. — Law 8-242, the "District of Columbia Underground Storage Tank Management Act of 1990," was introduced in Council and assigned Bill No. 8-382, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 4, 1990, and December 18, 1990, respectively. Signed by the Mayor on December 27,

1990, it was assigned Act No. 8-325 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-159. — Law 9-159, the "District of Columbia Underground Storage Tank Management Act of 1990 Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-286, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 2, 1992, and July 7, 1992, respectively. Signed by the Mayor on July 21, 1992, it was assigned Act No. 9-253 and transmitted to both Houses of Congress for its review. D.C. Law 9-159 became effective on September 29, 1992.

Delegation of authority under D.C. Law 8-242, the "D.C. Underground Storage Tank Management Act of 1990". — See Mayor's Order 91-160, October 9, 1991.

§ 6-995.2. Notification.

(a) Within 120 days after March 8, 1991, the owner of an underground storage tank shall notify the Mayor of the existence of any tank and specify the age, size, type, location, and use of the tank and any other information required by the Mayor.

(b) Notice shall not be required if the owner of an underground storage tank has:

(1) Taken the tank out of operation on or before January 1, 1974; or

(2) Previously filed a federal underground storage tank notification form with the Mayor.

(c) Any owner who brings into use an underground storage tank after March 8, 1991, shall notify the Mayor within 30 days of the existence of the tank as provided in subsection (a) of this section.

(d) Any owner of tanks located at different facilities shall file a separate notification form for each facility.

(e) An owner shall submit notice to the Mayor 30 days prior to a permanent removal from service or a change in the reported use, contents, or ownership of an underground storage tank.

(f) Beginning 30 days after the Mayor issues rules pursuant to § 6-995.12 regarding performance standards for new underground storage tanks, any person who deposits regulated substances into an underground storage tank or sells or leases an underground storage tank shall notify the owner of the tank of the notification requirement pursuant to this section.

(g) Beginning 30 days after September 29, 1992, any person who sells real property in the District of Columbia upon which underground storage tanks are located, or from which underground storage tanks have been removed during the seller's ownership, shall inform each prospective buyer in writing, prior to entering into a contract for sale, of the existence or removal of any tanks of which the seller has knowledge. (Mar. 8, 1991, D.C. Law 8-242, § 3, 38 DCR 344; Sept. 29, 1992, D.C. Law 9-159, § 2(b), 39 DCR 5690.)

Section references. — This section is referred to in § 6-995.9.

Effect of amendments. — D.C. Law 9-159 amended (b) with no apparent effect on text; and added (g).

Legislative history of Law 8-242. — See note to § 6-995.1.

Legislative history of Law 9-159. — See note to § 6-995.1.

§ 6-995.3. Release notification requirements.

(a) Any responsible party or any authorized agent of a responsible party; any person who tests, installs, or removes tanks; any person who engages in site investigation, assessment, remediation, or geotechnical exploration; or any public utility company or authorized agent of a public utility company who knows, or has reason to know, of a release from an underground storage tank shall notify the Mayor of the release.

(b) The notification shall consist of, if known, the name of the owner, operator, and any other responsible party, as well as the location, date, time, volume, and substance of the release. The notification shall include, if known,

any immediate and ongoing action taken to mitigate the release, any subsequent hazardous conditions caused by the release, and an evaluation of any potential environmental hazard evident by the condition or disposition of the tank. (Mar. 8, 1991, D.C. Law 8-242, § 4, 38 DCR 344; Sept. 29, 1992, D.C. Law 9-159, § 2(c), 39 DCR 5690.)

Effect of amendments. — D.C. Law 9-159 rewrote (a).

Legislative history of Law 9-159. — See note to § 6-995.1.

Legislative history of Law 8-242. — See note to § 6-995.1.

§ 6-995.4. Interim prohibition for installation.

From March 8, 1991, until the effective date of the rules issued pursuant to § 6-995.12 regarding performance standards for new underground storage tanks, no person may install an underground storage tank to store a regulated substance unless the tank, whether of single or double wall construction, complies with the District of Columbia Fire Prevention Code and the new tank performance standards set forth in 40 CFR part 280. (Mar. 8, 1991, D.C. Law 8-242, § 5, 38 DCR 344.)

Section references. — This section is referred to in § 6-995.9.

Legislative history of Law 8-242. — See note to § 6-995.1.

§ 6-995.5. Underground Storage Tank Trust Fund.

(a) The District of Columbia Underground Storage Tank Trust Fund ("Fund") is hereby established as a nonlapsing, revolving fund, to be administered by the Mayor and used for the implementation of the District's regulatory program for underground storage tanks that contain regulated substances.

(b) The Fund shall be financed through tank fees, including registration, licensure, certification, and inspection fees, civil penalties, costs and judgments recovered, grants, contributions, and monies received as reimbursement pursuant to the provisions of this subchapter.

(c) The Fund shall be accounted for under procedures established pursuant to subchapter V of Chapter 3 of Title 47, and any other applicable law.

(d) Disbursements from the Fund may be made to undertake corrective action including site assessment, cleanup, and housing and relocation assistance. A disbursement may be made if there is a release of a regulated substance into the environment from an underground storage tank, based upon a priority system to be established by the Mayor, if the action is necessary to protect human health or the environment, and 1 or more of the following exist:

(1) No person can be found within 90 days or a shorter period, as may be necessary to protect human health or the environment, who is:

(A) An owner or operator;

(B) Subject to the corrective action rules issued pursuant to § 6-995.12; and

(C) Capable of proper implementation of the required corrective action.

(2) A situation exists that requires immediate action by the Mayor to protect human health and the environment.

(3) Corrective action costs at a facility exceed the amount of coverage required by the Mayor pursuant to the financial responsibility requirement imposed in the rules, and expenditures from the Fund are necessary to ensure an effective corrective action.

(4) The responsible party for the tank has failed or refused to comply with an order issued by the Mayor that requires compliance with the corrective action rules.

(e) The District government's share of the cost of corrective action with respect to any release of regulated substances into the environment from an underground storage tank undertaken under a cooperative agreement with the United States Environmental Protection Agency shall be in accordance with the provisions of section 9003(h)(7)(B) of the Solid Waste Disposal Act, approved November 8, 1984 (98 Stat. 3279; 42 U.S.C. 6991b(h)(7)(B)).

(f) Disbursements from the Fund may be provided for administrative and operational costs incurred by the Mayor in the implementation of the provisions of the underground storage tank regulatory program.

(g) If costs are incurred by the District government for undertaking any corrective or enforcement action with respect to the release of a regulated substance from an underground storage tank, the responsible parties shall be jointly and severally liable to the District government for the costs. In addition to any other enforcement action, the Mayor may assess any reasonable costs of the correction of the condition and any related expenses as a tax against the property, carry the tax on the regular tax rolls, and collect the tax in the same manner as real estate taxes are collected. In determining the equities for seeking the recovery of costs under this subsection, the Mayor may consider the amount of financial responsibility required to be maintained under the rules issued pursuant to § 6-995.12.

(h) Nothing in this section shall be construed to make the District government responsible for corrective action costs to any person in excess of the monies in the Fund. (Mar. 8, 1991, D.C. Law 8-242, § 6, 38 DCR 344; Sept. 29, 1992, D.C. Law 9-159, § 2(d), 39 DCR 5690.)

Section references. — This section is referred to in § 6-995.8.

Effect of amendments. — D.C. Law 9-159 rewrote (b).

Legislative history of Law 8-242. — See note to § 6-995.1.

Legislative history of Law 9-159. — See note to § 6-995.1.

§ 6-995.6. Certification, registration, and licensing.

(a) The Mayor may require the licensing of any business and the certification of any individual who installs, removes, or tests underground storage tanks. The Mayor may, by rules issued in accordance with § 6-995.12, establish prerequisites for licensing and certification including minimum qualifications, proof of financial responsibility, application fees, and procedures.

(b) Any owner of an underground storage tank that contains a regulated substance shall register the tank with the Mayor on an annual basis pursuant

to the rules issued and shall pay the required fee. A copy of the registration certificate shall be kept conspicuously displayed and available for inspection at any facility where the underground storage tank is located.

(c) The annual registration fee shall be:

(1) \$500 for an initial registration and \$200 for a renewal registration for a tank over 10,000 gallons; and

(2) \$200 for an initial registration and \$100 for a renewal registration for a tank of 10,000 gallons or under.

(d) The Mayor may adjust fees in accordance with rules issued pursuant to § 6-995.12 beginning 2 years after March 8, 1991. (Mar. 8, 1991, D.C. Law 8-242, § 7, 38 DCR 344; Sept. 29, 1992, D.C. Law 9-159, § 2(e), 39 DCR 5690.)

Section references. — This section is referred to in § 6-995.7.

Effect of amendments. — D.C. Law 9-159 in (c)(2) substituted “of 10,000 gallons or under” for “under 10,000 gallons.”

Legislative history of Law 8-242. — See note to § 6-995.1.

Legislative history of Law 9-159. — See note to § 6-995.1.

§ 6-995.7. Denial, suspension, or revocation.

The Mayor may suspend, revoke, or refuse to issue, renew, or restore a license or certificate issued under § 6-995.6 to protect the public health, safety, or welfare if the Mayor finds that the applicant or holder has:

(1) Failed to meet and maintain the standards established by this subchapter or rules issued pursuant to this subchapter;

(2) Submitted a false or fraudulent record, invoice, or report;

(3) Engaged in fraud or misrepresentation in the application for licensure or certification;

(4) Had a history of repeated violations; or

(5) Had his license or certification denied, revoked, or suspended in another state or jurisdiction. (Mar. 8, 1991, D.C. Law 8-242, § 8, 38 DCR 344.)

Legislative history of Law 8-242. — See note to § 6-995.1.

§ 6-995.8. Right of entry; inspections; analyses; corrective action.

(a) For the purpose of enforcing this subchapter or any rule issued pursuant to this subchapter, the Mayor or his or her designated representative may, at any reasonable time, upon the presentation of appropriate credentials to the owner, operator, or agent in charge:

(1) Enter without delay any place where an underground storage tank is or has been located or where a release is suspected;

(2) Inspect and obtain samples of any regulated substance contained in the tank;

(3) Inspect and copy any record, report, information, or test result required to be maintained pursuant to this subchapter, rules issued pursuant to this subchapter, or relevant to the operation of any underground storage tank; and

(4) Conduct monitoring or testing of any tank, associated equipment, contents, surrounding soils, air, surface water, or groundwater.

(b) If the Mayor is denied access to any place where an underground storage tank is or has been located, the Mayor may apply to a court of competent jurisdiction for a search warrant.

(c) If a designated representative or employee of the Mayor obtains any sample prior to leaving the premises, he or she shall give the owner, operator, or agent in charge, a receipt that describes the sample obtained, and if requested, a portion of the sample equal in volume or weight to the portion obtained. If any analysis is made of a sample, a copy of the results of the analysis shall be furnished promptly to the owner, operator, or agent in charge.

(d) The Mayor may require the responsible party to provide any information or record with respect to any underground storage tank or system if the information or record is necessary to determine compliance with the rules or to conduct monitoring or testing of the tanks, associated equipment, contents, surrounding soils, air, or surface water or groundwater. The Mayor may require the responsible party to take any necessary corrective action.

(d-1) The Mayor, or his or her designated agent, may enter upon property to perform, or cause to be performed, corrective actions necessary to protect human health or the environment under the circumstances set forth in § 6-995.5(d). The Mayor shall give prior notice of the action to the owner or operator and the real property owner by first attempting personal service or service by registered mail, and, if unsuccessful, by providing notice by publication and conspicuous posting on the property.

(e) The Mayor may take summary corrective action if a release of a regulated substance from an underground storage tank creates an imminent threat to human health or the environment. The Mayor shall provide an opportunity for a hearing with respect to the summary action without prejudice to the authority of the Mayor to take and complete the action. The Mayor shall give prior notice of the action to the owner, operator, or agent in charge and the real property owner, by personal service or by registered mail, and by conspicuous posting on the property, unless the emergency nature of the situation makes prior notice by personal service or registered mail impractical. If the owner, operator, or agent in charge cannot be located, notice shall be provided by conspicuous posting on the property. (Mar. 8, 1991, D.C. Law 8-242, § 9, 38 DCR 344; Sept. 29, 1992, D.C. Law 9-159, § 2(f), 39 DCR 5690.)

Effect of amendments. — D.C. Law 9-159 in (a)(1) added the language after “located”; added (d-1); and rewrote (e).

Legislative history of Law 9-159. — See note to § 6-995.1.

Legislative history of Law 8-242. — See note to § 6-995.1.

§ 6-995.9. Enforcement; penalties.

(a)(1) Repealed.

(2) The notice shall state the nature of the violation or threatened violation, afford the right to a hearing, and allow a reasonable time for the performance of the necessary corrective measures, consistent with the likeli-

hood for harm and the need to protect health, safety, life, property, and the environment.

(b) If a person fails to comply with a notice of violation issued pursuant to subsection (a) of this section within the time stated in the notice, the Mayor may issue a proposed compliance order, or a proposed cease and desist order, or may institute a court action for injunctive relief, damages, civil penalties, or recovery of any corrective action costs, necessary to promptly and effectively terminate the violation or threatened violation and protect life, property, or the environment.

(1) A proposed compliance order or proposed cease and desist order issued under this section shall include a statement of the nature of the violation, afford the right to a hearing, and allow a reasonable time for compliance with the order, consistent with the likelihood of harm and the need to protect health, safety, life, property, and the environment, and shall state any penalties to be assessed for failure to comply with the order.

(2) A proposed order issued under this section shall become effective and final unless the person or persons named therein request a hearing no later than 15 days after the order is served. If requested, the public hearing shall be conducted in compliance with the requirements of § 1-1509.

(c)(1) The Mayor may issue an immediate compliance order, or an immediate cease and desist order, or may seek a temporary restraining order, without first issuing a notice of violation or threatened violation pursuant to subsection (a) of this section and without first providing reasonable notice and an opportunity to be heard pursuant to subsection (b) of this section, in order to require a person to correct a situation which immediately threatens public health or the environment or to restrain any person from engaging in any unauthorized activity that immediately endangers or causes damage to public health or the environment.

(2) A compliance order or cease and desist order issued under this section shall be effective upon issuance and shall become final unless the person named in the order requests a public hearing within 72 hours after the order is served. If requested, the Mayor shall hold a hearing within 15 days from the date the hearing request is received and shall issue a decision no later than 15 days after the hearing. The hearing shall be conducted in compliance with § 1-1509.

(d) Any person who fails to comply with a final compliance order or a final cease and desist order issued pursuant to this section shall be liable for a civil penalty of not more than \$25,000 for each day of noncompliance.

(e) Any person who knowingly fails to notify or submits false information pursuant to § 6-995.2(a) through (f) shall be subject to a civil penalty not to exceed \$10,000 for each violation.

(f) Any person who fails to comply with any applicable rules issued pursuant to § 6-995.12 or with the requirements of § 6-995.4 shall be subject to a civil penalty not to exceed \$10,000 for each tank for each day of violation.

(g) A civil fine, penalty, or fee may be imposed as an alternative sanction for any infraction of the provisions of this subchapter or the rules issued in accordance with this subchapter, pursuant to Chapter 27 of this title. Adjudication of any infraction shall be pursuant to Chapter 27 of this title.

(h) Any action under this section shall be in the Superior Court of the District of Columbia in the name of the District of Columbia, and shall be instituted by the Office of Corporation Counsel.

(i) In any action brought for civil penalties, damage, or equitable relief under this subchapter, the statute of limitations shall not begin to toll until the injury is discovered or, with reasonable diligence, should have been discovered.

(j) The Mayor may cause to be entered any final order requiring a party to take corrective action or to pay fines, penalties, or costs as a judgment against the party in the Superior Court of the District of Columbia. The Mayor may enforce the judgment in the same manner as any other civil judgment may be enforced under District law.

(k) Any person adversely affected or aggrieved by a final order issued pursuant to this section may appeal to the District of Columbia Court of Appeals. (Mar. 8, 1991, D.C. Law 8-242, § 10, 38 DCR 344; Sept. 29, 1992, D.C. Law 9-159, § 2(g), 39 DCR 5690.)

Effect of amendments. — D.C. Law 9-159 repealed (a)(1); in the introductory language of (b), inserted “proposed” twice, inserted “damages, civil penalties” and made minor changes; added (b)(1) and (2); rewrote (c)(1) and (2); in (d) inserted “final” in two places and deleted “subsection (b) of” following “pursuant to”; in (e) substituted “person” for “owner” and inserted

(a) through (f); in (f) substituted “§ 6-995.12” for “§ 6-995.2”; in (h) substituted “action” for “prosecution”; and added (j) and (k).

Legislative history of Law 8-242. — See note to § 6-995.1.

Legislative history of Law 9-159. — See note to § 6-995.1.

§ 6-995.10. Summary action.

(a) If the Mayor determines during or after an investigation that the conduct of any business or individual who installs, removes, or tests an underground storage tank presents an imminent danger to the health or safety of the residents of the District, the Mayor may summarily suspend or restrict, without a hearing, the license of the business or certificate of the individual.

(b) At the time of the summary suspension or restriction, the Mayor shall provide the licensee or certificate holder with a written notice stating the action that is being taken, the basis for the action, and the right of the licensee or certificate holder to request a hearing.

(c) A licensee or certificate holder shall have the right to request a hearing within 72 hours after service of notice of the summary suspension or restriction of the license or certificate. The Mayor shall hold a hearing within 15 days of receipt of a timely request, and shall issue a decision within 15 days after the hearing.

(d) Any decision and order adverse to a licensee or certified holder shall be in writing and accompanied by findings of fact and conclusions of law. The Mayor shall provide a copy of the decision and order and findings of fact and conclusions of law to each party or his or her attorney of record.

(e) Any licensee or certificate holder aggrieved by a decision and order may file an appeal in accordance with § 1-1510. (Mar. 8, 1991, D.C. Law 8-242, § 11, 38 DCR 344; Sept. 29, 1992, D.C. Law 9-159, § 2(h), 39 DCR 5690.)

Effect of amendments. — D.C. Law 9-159 in (e) substituted “§ 1-1510” for “§ 1-1511.”

Legislative history of Law 9-159. — See note to § 6-995.1.

Legislative history of Law 8-242. — See note to § 6-995.1.

§ 6-995.11. Citizen’s right of action.

(a) Any person aggrieved by a violation of any requirement of this subchapter or rule issued pursuant to this subchapter may commence a civil action on his or her own behalf against any person who is alleged to be in violation.

(b) The Court shall have jurisdiction in any action brought pursuant to subsection (a) of this section to enforce the requirement or to order any action necessary to correct the violation, and to impose any civil penalty provided for the violation.

(c) No action may be commenced under subsection (a) of this section until 30 days after the plaintiff has given notice of the violation to the Office of Corporation Counsel for the District of Columbia and to the alleged violator.

(d) No action may be commenced under subsection (a) of this section if the Mayor has commenced and is diligently prosecuting an action to obtain compliance with the requirements of this subchapter or rules issued pursuant to this subchapter.

(e) The Court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation, including reasonable attorney and expert witness fees, to the prevailing or substantially prevailing party if the court determines an award is appropriate.

(f) An owner or operator who enters on the property of another person in order to investigate or remediate a leaking underground storage tank site shall be liable for any damages to person or property which result from the action of the owner or operator or the agents of the owner or operator. (Mar. 8, 1991, D.C. Law 8-242, § 12, 38 DCR 344; Sept. 29, 1992, D.C. Law 9-159, § 2(i), 39 DCR 5690.)

Effect of amendments. — D.C. Law 9-159 in (d) deleted “concerned” following “pursuant to this subchapter”; and added (f).

Legislative history of Law 9-159. — See note to § 6-995.1.

Legislative history of Law 8-242. — See note to § 6-995.1.

§ 6-995.12. Rules.

(a) The Mayor shall, pursuant to subchapter I of Chapter 15 of Title 1, issue and may revise, as appropriate, rules necessary to carry out the purposes and implement the provisions of this subchapter, including rules regarding requirements for:

(1) The maintenance of leak detection, prevention, inventory control, and tank testing systems;

(2) The maintenance of records of any monitoring or leak detection system or an inventory control or tank testing system;

(3) The reporting of releases and any corrective action taken;

(4) The abandonment in place, closure, or removal of underground storage tanks to prevent future releases of regulated substances into the environment;

(5) The maintenance of evidence of financial responsibility in order to take corrective action and compensate any 3rd party for bodily injury or property damage which shall conform to the federal financial responsibility requirements issued pursuant to section 9004 of the Solid Waste Disposal Act, approved November 8, 1984 (98 Stat. 3282; 42 U.S.C. 6991c);

(6) The establishment of standards of performance for new underground storage tanks;

(7) The taking of corrective action in response to a release from an underground storage tank that meets District and federal cleanup objectives;

(8) Public participation in the implementation and enforcement of this subchapter;

(9) Standards and fees for the registration, installation, and abandonment of tanks; and

(10) Tanks that are exempt from regulation.

(b) Until the Mayor, by rule, determines which tanks shall be exempt from regulation, the exemptions set forth in section 9001(1) of the Solid Waste Disposal Act (42 U.S.C. 6991(1)) shall be applicable. (Mar. 8, 1991, D.C. Law 8-242, § 13, 38 DCR 344; Sept. 29, 1992, D.C. Law 9-159, § 2(j), 39 DCR 5690.)

Section references. — This section is referred to in §§ 6-995.1, 6-995.2, 6-995.4, 6-995.5, 6-995.6, and 6-995.9.

Effect of amendments. — D.C. Law 9-159 in (a)(8) deleted “development, revision,” following “in the.”

Legislative history of Law 8-242. — See note to § 6-995.1.

Legislative history of Law 9-159. — See note to § 6-995.1.

CHAPTER 10. ANIMAL CONTROL.

Sec.

- 6-1001. Definitions.
- 6-1002. Animal Control Agency.
- 6-1003. Vaccinations.
- 6-1004. Licenses and fees.
- 6-1005. Impoundment.
- 6-1006. Release to owner.
- 6-1007. Adoption.

Sec.

- 6-1008. Prohibited conduct.
- 6-1009. Animal hobby permit.
- 6-1010. Education and incentive program.
- 6-1011. Penalty.
- 6-1012. Civil liability.
- 6-1013. Notice of violation.

§ 6-1001. Definitions.

For the purposes of this chapter:

(1) The term “animal at large” means any animal found off the premises of its owner and neither leashed nor otherwise under the immediate control of a person capable of physically restraining it.

(2) The term “animal shelter” means a District of Columbia government facility used by the Animal Control Agency for the care and detention of animals.

(3) The term “dangerous animal” means an animal that because of specific training or demonstrated behavior threatens the health or safety of the public. The term “dangerous animal” shall not include a dangerous dog as defined in § 6-1021.1(1).

(4) The term “Mayor” means the Mayor of the District of Columbia or his designee.

(5) The term “owner” means a person in the District of Columbia who purchases or keeps an animal in temporary or permanent custody except as provided in § 6-1004.

(6) The term “vaccinated” means protected by a documented inoculation that the Mayor, consistent with the practices of veterinary medicine, determines is currently effective. (1973 Ed., § 6-2401; Oct. 18, 1979, D.C. Law 3-30, § 2, 26 DCR 765; Oct. 18, 1988, D.C. Law 7-176, § 9(a), 35 DCR 4787.)

Legislative history of Law 3-30. — Law 3-30, the “Animal Control Act of 1979,” was introduced in Council and assigned Bill No. 3-75, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 19, 1979 and July 3, 1979, respectively. Signed by the Mayor on August 7, 1979, it was assigned Act No. 3-80 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-176. — See note to § 6-1021.1.

Mayor authorized to issue rules. — Section 2(f) of D.C. Law 9-236 provided that the Mayor may issue rules to implement the provisions of the act pursuant to subchapter I of Chapter 15 of Title 1.

§ 6-1002. Animal Control Agency.

(a) The Mayor may contract, either by negotiation or competitive bid, with a District of Columbia humane organization to serve as the Animal Control Agency. The Mayor may delegate all or part of his authority under this chapter, including the issuance of notices of violations, to the Animal Control Agency: Provided, that only a sworn member of the Metropolitan Police Department

may serve a notice of violation with respect to § 6-1008(a) outside the premises of the animal shelter.

(b) The Animal Control Agency shall deliver all fees collected under this chapter to the Mayor. (1973 Ed., § 6-2402; Oct. 18, 1979, D.C. Law 3-30, § 3, 26 DCR 765; Sept. 16, 1980, D.C. Law 3-97, § 2(a), 27 DCR 3523.)

Legislative history of Law 3-30. — See note to § 6-1001.

Legislative history of Law 3-97. — Law 3-97, the “Animal Control Act Amendment Act of 1980,” was introduced in Council and assigned Bill No. 3-211, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June

17, 1980 and July 1, 1980, respectively. Signed by the Mayor on July 16, 1980, it was assigned Act No. 3-219 and transmitted to both Houses of Congress for its review.

Delegation of authority pursuant to Law 3-30. — See Mayor’s Order 83-206, August 2, 1983, as amended by Mayor’s Order 86-64, April 22, 1986.

§ 6-1003. Vaccinations.

(a) An owner who has a dog over the age of 4 months shall have the dog vaccinated against rabies and distemper. Pursuant to rules issued by the Mayor, an owner of a cat over the age of 4 months shall have that cat vaccinated against rabies.

(b) The Mayor shall provide a free anti-rabies vaccination clinic annually. (1973 Ed., § 6-2403; Oct. 18, 1979, D.C. Law 3-30, § 4, 26 DCR 765; Mar. 10, 1983, D.C. Law 4-199, § 4(a), 30 DCR 119.)

Legislative history of Law 3-30. — See note to § 6-1001.

Legislative history of Law 4-199. — Law 4-199, the “Christmas Tree Act of 1982,” was introduced in Council and assigned Bill No. 4-427, which was referred to the Committee on Human Services. The Bill was adopted on first

and second readings on November 16, 1982, and December 14, 1982, respectively. Signed by the Mayor on December 28, 1982, it was assigned Act No. 4-283 and transmitted to both Houses of Congress for its review.

Delegation of authority under Law 3-30. — See Mayor’s Order 83-206, August 2, 1983.

§ 6-1004. Licenses and fees.

(a) For purposes of this section, “owner” shall not include:

- (1) A licensed veterinary hospital;
- (2) A licensed pet shop; and

(3) An incorporated animal welfare agency not engaged in the sale of animals.

(b) An owner who has a dog over the age of 4 months shall before July 1st of each year, or within 10 days of acquiring the dog, or within 10 days after the dog becomes 4 months of age, obtain an annual license. An owner shall ensure that his dog wears a collar and a license.

(c) Before any annual license may be issued, the owner of the dog shall have the dog vaccinated against rabies and distemper, and shall pay any outstanding fines.

(d) The Mayor shall collect the fees and issue the licenses as provided in this section.

(e) Except as provided in subsection (f) of this section, the annual license fee for a dog is as follows:

(1) No fee for a dog trained to aid the audio-handicapped or blind and actually used for that purpose;

(2) \$10 for a male dog certified by a licensed veterinarian as either neutered or incapable of enduring neutering;

(3) \$10 for a female dog certified by a licensed veterinarian as either spayed or incapable of enduring spaying; and

(4) \$35 for all other dogs.

(f) For the year July 1, 1979, to June 30, 1980, the annual license fee for a dog is as follows:

(1) No fee for a dog trained to aid the audio-handicapped or blind and actually used for that purpose;

(2) \$8 in any other case.

(g) No license may be transferred from 1 dog to another. (1973 Ed., § 6-2404; Oct. 18, 1979, D.C. Law 3-30, § 5, 26 DCR 765; Mar. 17, 1993, D.C. Law 9-236, § 2(a), 40 DCR 614.)

Section references. — This section is referred to in §§ 6-1001, 6-1006, 6-1007, and 6-1009.

Effect of amendments. — D.C. Law 9-236 in (e)(2) substituted "\$10" for "\$5" and added "certified by a licensed veterinarian as either neutered or incapable of enduring neutering"; in (e)(3) substituted "\$10" for "\$5"; and in (e)(4) substituted "\$35 for all other dogs" for "\$25 in any other case."

Temporary amendment of section. — Section 101 of D.C. Law 10-253 amended (d) to read as follows:

"(d) The Mayor shall collect the fees and issue the licenses as provided in this section. The Mayor shall promulgate regulations to allow veterinarians to collect license fees and issue licenses. The regulations shall permit veterinarians to collect an additional \$2 for each license issued as reimbursement for administrative costs."

Section 1301(b) of D.C. Law 10-253 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Multiyear Budget Spending Reduction and Support Act of 1995, whichever occurs first.

Emergency act amendments. — For temporary amendment of section, see § 101 of the Multiyear Budget Spending Reduction and Support Emergency Act of 1994 (D.C. Act. 10-389, December 29, 1994, 42 DCR 197).

Legislative history of Law 3-30. — See note to § 6-1001.

Legislative history of Law 9-236. — Law 9-236, the "Animal Control Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-306, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on December 1, 1992, and December 15, 1992, respectively. Signed by the Mayor on December 31, 1992, it was assigned Act No. 9-368 and transmitted to both Houses of Congress for its review. D.C. Law 9-236 became effective on March 17, 1993.

Legislative history of Law 10-253. — Law 10-253, the "Multiyear Budget Spending Reduction and Support Temporary Act of 1995," was introduced in Council and assigned Bill No. 10-857. The Bill was adopted on first and second readings on December 21, 1994, and January 3, 1995, respectively. Deemed approved without the signature of the Mayor on January 27, 1994, it was assigned Act No. 10-401 and transmitted to both Houses of Congress for its review. D.C. Law 10-253 became effective on March 23, 1995.

Delegation of authority pursuant to Law 3-30. — See Mayor's Order 83-206, August 2, 1983, as amended by Mayor's Order 86-64, April 22, 1986.

§ 6-1005. Impoundment.

(a) The Mayor may impound any animal at large or any dangerous animal.

(b) Upon impounding an animal, the Mayor shall make a prompt and reasonable attempt to locate and notify the owner of the impounded animal.

(c) The Mayor may dispose of any wild, sick, or badly injured animal upon its impoundment.

(d) The Mayor shall provide appropriate vaccinations for each animal upon its impoundment.

(e) The Mayor shall provide appropriate veterinary services for each dog wearing a valid license upon its impoundment.

(f) The Mayor shall deem abandoned any animal impounded and not redeemed by its owner within 7 days of impoundment if such animal is wearing identification. If notice is given under subsection (b) of this section, the owner has 7 days from the date of the notice to claim the animal. Any animal impounded not wearing identification shall be deemed abandoned if not redeemed by its owner within 5 days of impoundment. An animal deemed abandoned shall become the property of the District of Columbia and may be adopted or disposed of in a humane manner.

(g) The Mayor shall not release an animal unless it is vaccinated against rabies.

(h) The Mayor shall not release a sick or dangerous animal to anyone other than a licensed veterinarian until reasonably satisfied that it is safe to do so.

(i) The Mayor shall adopt rules for disposing of animals impounded under this section in accordance with § 1-1506. (1973 Ed., § 6-2405; Oct. 18, 1979, D.C. Law 3-30, § 6, 26 DCR 765; Sept. 16, 1980, D.C. Law 3-97, § 2(b), 27 DCR 3523; Mar. 17, 1993, D.C. Law 9-236, § 2(b), 40 DCR 614.)

Section references. — This section is referred to in § 6-1006.

Effect of amendments. — D.C. Law 9-236 in (f) in the first sentence substituted “if such animal is wearing identification” for “or, if notice is given under subsection (b) of this section, within 7 days of such notice” and inserted the second and third sentences.

Legislative history of Law 3-30. — See note to § 6-1001.

Legislative history of Law 3-97. — See note to § 6-1002.

Legislative history of Law 9-236. — See note to § 6-1004.

Delegation of authority under Law 3-30. — See Mayor’s Order 83-206, August 2, 1983.

§ 6-1006. Release to owner.

(a) The Mayor shall not release a dog to its owner unless the owner has obtained a license as provided in § 6-1004.

(b) An owner of an animal that is impounded shall pay the following:

(1) An impoundment fee of \$15 for animals certified by a licensed veterinarian as either spayed or neutered or incapable of enduring spaying or neutering;

(2) An impoundment fee of \$15 for unneutered and unspayed animals, provided the owner agrees to have the animal sterilized and prepay the cost of the surgery;

(3) An impoundment fee of \$75 for dogs and \$50 for all other animals that have not been spayed or neutered, where the owner does not utilize the option in paragraph (2) of this subsection;

(4) A boarding fee of \$5 for each night after the 1st night;

(5) The cost of veterinary services, including vaccinations, provided by the Mayor; and

(6) Any outstanding fines.

(c) The Mayor shall issue a notice of violation to an owner of an animal impounded under § 6-1005 except that this subsection shall not apply the 1st

time an owner has an animal impounded. (1973 Ed., § 6-2406; Oct. 18, 1979, D.C. Law 3-30, § 7, 26 DCR 765; Mar. 17, 1993, D.C. Law 9-236, § 2(c), 40 DCR 614.)

Effect of amendments. — D.C. Law 9-236 in (b) rewrote (1); added (2) and (3) and redesignated former (2)-(4) accordingly; and in (4) substituted "\$5" for "\$3."

Legislative history of Law 3-30. — See note to § 6-1001.

Legislative history of Law 9-236. — See note to § 6-1004.

§ 6-1007. Adoption.

(a) The Mayor shall not release a dog for adoption unless the person adopting the dog obtains a license as provided in § 6-1004.

(b)(1) The Mayor shall not release a female animal over the age of 6 months for adoption unless:

(A) The animal has been spayed; and

(B) The person adopting the animal has paid the expense of spaying.

(2) The Mayor shall not release a female animal under the age of 6 months for adoption unless the person adopting the animal has paid the expense of spaying the animal. The person adopting the animal shall have it spayed before it becomes 6 months of age.

(3) The Mayor shall not release a male animal over the age of 10 months for adoption unless:

(A) The animal has been neutered; and

(B) The person adopting the animal has paid the expense of neutering.

(4) The Mayor shall not release a male animal under the age of 10 months for adoption unless the person adopting the animal has paid the expense of neutering the animal. The person adopting the animal shall have it neutered before it becomes 10 months of age.

(5) The Mayor shall refund any money collected for the purpose of spaying or neutering an animal upon proof that the animal has been spayed or neutered by a private veterinarian. (1973 Ed., § 6-2407; Oct. 18, 1979, D.C. Law 3-30, § 8, 26 DCR 765; Sept. 16, 1980, D.C. Law 3-97, § 2(c), 27 DCR 3523.)

Legislative history of Law 3-30. — See note to § 6-1001.

Legislative history of Law 3-97. — See note to § 6-1002.

Delegation of authority under Law 3-30. — See Mayor's Order 83-206, August 2, 1983.

§ 6-1008. Prohibited conduct.

(a) No owner of an animal shall allow the animal to go at large.

(b) No person shall knowingly and falsely deny ownership of any animal.

(c) No person shall remove the license of a dog without the permission of its owner.

(d) No person shall change the natural color of a baby chicken, duckling, other fowl or rabbit.

(e) No dog shall be permitted on any school ground when school is in session or on any public recreation area unless the dog is leashed.

(f) No person shall sell or offer for sale a baby chicken, duckling, other fowl, or rabbit that has had its natural color changed.

(g) No person shall sell or offer for sale a rabbit under the age of 16 weeks or a chick or duck under the age of 8 weeks except for agricultural or scientific purposes.

(h)(1) Except as provided in this subsection, no person shall import into the District, possess, display, offer for sale, trade, barter, exchange, or adoption, or give as a household pet any living member of the animal kingdom including those born or raised in captivity, except the following: domestic dogs (excluding hybrids with wolves, coyotes, or jackals), domestic cats (excluding hybrids with ocelots or margays), domesticated rodents and rabbits, captive-bred species of common cage birds, nonpoisonous snakes, fish, and turtles, traditionally kept in the home for pleasure rather than for commercial purposes, and racing pigeons (when kept in compliance with permit requirements).

(2) A person may offer the species enumerated in paragraph (1) of this subsection to a public zoo, park, museum, or educational institution for educational, medical, scientific, or exhibition purposes.

(3) This section shall not apply to federally licensed animal exhibitors; however, the Mayor retains the authority to restrict the movement of any prohibited animal into the District and the conditions under which those movements are made.

(4) The Mayor may allow a licensed wildlife rehabilitator, a licensed veterinarian, or a licensed animal shelter to maintain an animal prohibited in this subsection for treatment or pending appropriate disposition.

(5) Paragraph (1) of this subsection shall not apply to persons who own or possess domestic dog hybrids of wolves, coyotes, or jackals prior to March 17, 1993.

(i) No person may sponsor, promote, train an animal to participate in, contribute to the involvement of an animal in, or attend as a spectator any activity or event in which any animal engages in unnatural behavior, is wrestled or fought, mentally or physically harassed, or displayed in such a way that the animal is struck, abused, or mentally or physically stressed or traumatized, or is induced, goaded or encouraged to perform or react through the use of chemical, mechanical, electrical, or manual devices in a manner that will cause, or is likely to cause, physical or other injury or suffering. This prohibition applies to any event or activity at a public or private facility or property and is applicable regardless of the purpose of the event or activity and regardless of whether a fee is charged to spectators. (1973 Ed., § 6-2408; Oct. 18, 1979, D.C. Law 3-30, § 9, 26 DCR 765; Sept. 16, 1980, D.C. Law 3-97, § 2(d), (e), (g), 27 DCR 3523; Mar. 10, 1983, D.C. Law 4-199, § 4(b), 30 DCR 119; Mar. 17, 1993, D.C. Law 9-236, § 2(d), 40 DCR 614.)

Section references. — This section is referred to in § 6-1002.

Effect of amendments. — D.C. Law 9-236 in (h) rewrote (1) and added (3), (4), and (5); and added (i).

Legislative history of Law 3-30. — See note to § 6-1001.

Legislative history of Law 3-97. — See note to § 6-1002.

Legislative history of Law 4-199. — See note to § 6-1003.

Legislative history of Law 9-236. — See note to § 6-1004.

§ 6-1009. Animal hobby permit.

(a) No person shall own or keep 5 or more mammals, larger than a guinea pig and over the age of 4 months, without obtaining an animal hobby permit: Except, that this section shall not apply to a licensed pet shop, licensed veterinary hospital, circus or traveling exhibition.

(b) An owner of 5 or more mammals shall before July 1st of each year or within 10 days of acquiring 5 or more mammals obtain the permit required by this section.

(c) An owner applying for an animal hobby permit shall fully describe the kind and number of mammals to be maintained and the premises where the mammals are to be kept.

(d) No animal hobby permit shall be issued to:

(1) A dog owner unless the owner has obtained a license for each dog as provided in § 6-1004;

(2) An owner who maintains mammals for commercial purposes. For purposes of this section, "commercial purposes" shall not include the sale of offspring if such sales are occasional and are not the primary purpose for maintaining the mammals.

(e) The Mayor shall collect the fees and issue the permits as provided in this section.

(f) A holder of an animal hobby permit shall provide his mammals with appropriate veterinary care. A holder of an animal hobby permit shall maintain the premises and enclosures where the mammals are kept in a clean and sanitary condition.

(g) A holder of an animal hobby permit shall not permit objectionable odors or noises to disturb the comfort or quiet of any neighborhood. A holder of an animal hobby permit shall not permit a mammal to commit a nuisance on public space or property owned by others.

(h) The Mayor may revoke an animal hobby permit for failure to comply with the provisions of this section. (1973 Ed., § 6-2409; Oct. 18, 1979, D.C. Law 3-30, § 10, 26 DCR 765.)

Legislative history of Law 3-30. — See note to § 6-1001.

Delegation of authority pursuant to Law

3-30. — See Mayor's Order 83-206, August 2, 1983, as amended by Mayor's Order 86-64, April 22, 1986.

§ 6-1010. Education and incentive program.

The Mayor shall implement an education and incentive program, which shall include the following:

(1) Low cost spay and neuter clinic services; and

(2) Program for education of animal owners. (1973 Ed., § 6-2410; Oct. 18, 1979, D.C. Law 3-30, § 11, 26 DCR 765.)

Legislative history of Law 3-30. — See note to § 6-1001.

Delegation of authority pursuant to law

3-30. — See Mayor's Order 83-206, August 2, 1983.

§ 6-1011. Penalty.

Each person who violates a provision of this chapter shall pay a fine not to exceed \$25 for the first violation, \$50 for the second violation occurring within a 24-month period, and \$100 for each subsequent violation occurring within a 24-month period. (1973 Ed., § 6-2411; Oct. 18, 1979, D.C. Law 3-30, § 12, 26 DCR 765; Mar. 17, 1993, D.C. Law 9-236, § 2(e), 40 DCR 614.)

Effect of amendments. — D.C. Law 9-236 added the language beginning with “for the first violation.”

Legislative history of Law 3-30. — See note to § 6-1001.

Legislative history of Law 9-236. — See note to § 6-1004.

§ 6-1012. Civil liability.

If a dog injures a person while at large, lack of knowledge of the dog’s vicious propensity standing alone shall not absolve the owner from a finding of negligence. (Sept. 16, 1980, D.C. Law 3-97, § 2(f), 27 DCR 3523.)

Legislative history of Law 3-97. — See note to § 6-1002.

§ 6-1013. Notice of violation.

(a) The Mayor may issue a notice of violation to any person who violates a provision of this chapter.

(b) A notice of violation shall:

- (1) State the nature of the violation; and
- (2) Describe the procedures provided in this section.

(c) A notice of violation shall be the summons and complaint for the purposes of this chapter.

(d) A person shall answer a notice of violation within 15 days by:

(1) Depositing and forfeiting collateral in an amount established by the Superior Court of the District of Columbia; or

(2) Depositing collateral in an amount established by the Superior Court of the District of Columbia and requesting, through the issuing agency, a trial in Court.

(e) The Mayor shall prescribe the form for the notice of violation and establish procedures for the administrative control of the notice of violation. (1973 Ed., § 6-2412; Oct. 18, 1979, D.C. Law 3-30, § 13, 26 DCR 765.)

Legislative history of Law 3-30. — See note to § 6-1001.

Delegation of authority under Law 3-30. — See Mayor’s Order 83-206, August 2, 1983.

CHAPTER 10A. DANGEROUS DOGS.

Sec.

6-1021. Definitions.

6-1021.1. Definitions.

6-1021.2. Determination of a dangerous dog.

6-1021.3. Consequences of a dangerous dog de-
termination.

6-1021.4. Dangerous dog registration require-
ments.

6-1021.5. Dangerous dog owner responsibility.

Sec.

6-1021.6. Penalties.

6-1021.7. Annual dangerous dog licensing
drive; educational program.

6-1021.8. Rules.

6-1022. Pet ownership policy established.

6-1023. Exception.

6-1024. Civil infractions.

6-1025. Rules.

§ 6-1021. Definitions.

For the purposes of this chapter, the term:

(1) "District" means the District of Columbia.

(2) "Elderly" means any person who is 60 years of age or older.

(3) "Handicapped" means any person who has a medically determined physical impairment, including blindness, which prohibits and incapacitates 75% of that person's ability to move about, to assist himself or herself, or to engage in an occupation.

(4) "Locally assisted housing accommodation for the elderly or handicapped" means any building that contains 4 or more rental units, receives District housing assistance, and is designated for elderly or handicapped tenants. The term "locally assisted housing accommodation for the elderly or handicapped" shall not include facilities receiving other types of District assistance and licensed under § 32-1301 et seq.

(5) "Common household pet" means a domesticated animal, such as a dog, cat, bird, rodent, fish, or turtle, that is traditionally kept in the home for pleasure rather than for commercial purposes. The term "common household pet" shall not include reptiles, other than turtles. (Mar. 16, 1989, D.C. Law 7-181, § 2, 35 DCR 7715.)

Legislative history of Law 7-181. — Law 7-181, the "Pet Ownership Nonrestriction Act of 1988," was introduced in Council and assigned Bill No. 7-63, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on July 12, 1988 and September 27, 1988, respectively.

Signed by the Mayor on October 13, 1988, it was assigned Act No. 7-239 and transmitted to both Houses of Congress for its review.

Delegation of Authority Pursuant to D.C. Law 7-181, the Pet Ownership Nonrestriction Act of 1988. — See Mayor's Order 90-45, March 5, 1990.

§ 6-1021.1. Definitions.

For purposes of this chapter, the term:

(1)(A) "Dangerous dog" means any dog that:

(i) Has bitten or attacked a person or domestic animal without provocation; or

(ii) In a menacing manner, approaches without provocation any person or domestic animal as if to attack, or has demonstrated a propensity to attack without provocation or otherwise to endanger the safety of human beings or domestic animals.

(B) The term “dangerous dog” shall not include dogs used by law enforcement officials for legitimate law enforcement purposes.

(2) “Serious injury” means any physical injury that results in broken bones or lacerations requiring multiple sutures or cosmetic surgery.

(3) “Proper enclosure” means secure confinement indoors or secure confinement in a locked pen or structure measuring at least 5 feet in width, 10 feet in length, and 6 feet in height, with secure sides and a secure top, which provides protection from the elements for the dog, is suitable to prevent the entry of young children, and is designed to prevent the animal from escaping while on the owner’s property.

(4) “Owner” means any person, firm, corporation, organization, or department possessing, harboring, keeping, having an interest in, or having control or custody of a dog.

(5) “Impound” means taken into the custody of the Mayor of the District of Columbia. (Oct. 18, 1988, D.C. Law 7-176, § 2, 35 DCR 4787.)

Section references. — This section is referred to in § 6-1001.

Legislative history of Law 7-176. — Law 7-176, the “Dangerous Dog Amendment Act of 1988,” was introduced in Council and assigned Bill No. 7-276, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on May

17, 1988 and May 31, 1988, respectively. Signed by the Mayor on June 9, 1988, it was assigned Act No. 7-190 and transmitted to both Houses of Congress for its review.

Delegation of Authority under D.C. Law 7-176, the Dangerous Dog Amendment Act of 1988. — See Mayor’s Order 90-83, June 4, 1990.

§ 6-1021.2. Determination of a dangerous dog.

(a) If the Mayor has probable cause to believe that a dog is a dangerous dog, the Mayor may convene a hearing for the purpose of determining whether the dog in question shall be declared a dangerous dog and to determine if the dog would constitute a significant threat to the public health and safety if returned to its owner. Prior to a hearing, the Mayor shall conduct or cause to be conducted an investigation and shall provide reasonable notification of the hearing to the owner.

(b) Following notice to the owner and prior to the hearing, if the Mayor has probable cause to believe that a dog is a dangerous dog and may pose an immediate threat of serious harm to human beings or other domestic animals, the Mayor may obtain a search warrant pursuant to Rule 204 of the District of Columbia Superior Court Rules of Civil Procedure and impound the dog pending disposition of the case. The owner of the dog shall be liable to the District for the costs and expenses of keeping the dog.

(c) The hearing shall be held within no less than 5, and no more than 10 days, excluding holidays, Saturdays and Sundays, after service of notice upon the owner of the dog. The hearing shall be informal and open to the public. The owner shall have the opportunity to present evidence as to why the dog should not be declared a dangerous dog or not determined to be a significant threat to the public health and safety if returned to its owner. The Mayor may decide all issues for or against the owner of the dog regardless of whether the owner fails to appear at the hearing.

(d) Within 5 days after the hearing, the owner shall be notified in writing of the determination by the Mayor.

(e) If the owner contests the determination, the owner may, within 5 days of the determination, bring a petition in the Superior Court of the District of Columbia seeking de novo review of the determination. A decision by the Superior Court of the District of Columbia shall not affect the Mayor's right to later declare a dog to be a dangerous dog or to determine that the dog constitutes a threat to the public health and safety, for any subsequent actions of the dog. (Oct. 18, 1988, D.C. Law 7-176, § 3, 35 DCR 4787.)

Section references. — This section is referred to in § 6-1021.3.

Legislative history of Law 7-176. — See note to § 6-1021.1.

§ 6-1021.3. Consequences of a dangerous dog determination.

If a determination is made that a dog is a dangerous dog under § 6-1021.2, the owner shall comply with the provisions of §§ 6-1021.4 and 6-1021.5 and any other special security or care requirements established by the Mayor, and in accordance with a time schedule established by the Mayor. A dangerous dog determined to constitute a significant threat to the public health and safety if returned to its owner may be humanely destroyed. (Oct. 18, 1988, D.C. Law 7-176, § 4, 35 DCR 4787.)

Section references. — This section is referred to in § 6-1021.5.

Legislative history of Law 7-176. — See note to § 6-1021.1.

§ 6-1021.4. Dangerous dog registration requirements.

The Mayor shall issue a certificate of registration to the owner of a dangerous dog if the owner establishes to the satisfaction of the animal control agency that:

- (1) The owner of the dangerous dog is 18 years of age or older;
- (2) A valid license has been issued for the dangerous dog pursuant to District law;
- (3) The dangerous dog has current vaccinations;
- (4) The owner of the dangerous dog has the written permission of the property owner where the dangerous dog will be kept;
- (5) The owner of the dangerous dog has a proper enclosure to confine the dangerous dog;
- (6) The owner of the dangerous dog has posted on the premises a clearly visible written warning sign that there is a dangerous dog on the property with a conspicuous warning symbol that informs children of the presence of a dangerous dog;
- (7) The owner of the dangerous dog has secured a policy of liability insurance issued by an insurer qualified under District law in the amount of at least \$50,000 insuring the owner for any personal injuries inflicted by the dangerous dog and containing a provision requiring the District to be named as an additional insured for the sole purpose of requiring the insurance company

to notify the District of any cancellation, termination, or expiration of the liability insurance policy;

(8) The dangerous dog has been presented to the appropriate agency to be photographed for identification purposes; and

(9) The owner has paid an annual fee in an amount to be determined by the Mayor, in addition to regular dog licensing fees, to register the dangerous dog. (Oct. 18, 1988, D.C. Law 7-176, § 5, 35 DCR 4787.)

Section references. — This section is referred to in §§ 6-1021.3, 6-1021.5, and 6-1021.6.

Legislative history of Law 7-176. — See note to § 6-1021.1.

§ 6-1021.5. Dangerous dog owner responsibility.

It shall be unlawful for the owner of a dangerous dog in the District to:

(1) Keep a dangerous dog without a valid certificate of registration issued under § 6-1021.4;

(2) Permit the dangerous dog to be outside the proper enclosure unless the dangerous dog is under the control of a responsible person and is muzzled and restrained by a substantial chain or leash, not exceeding 4 feet in length. The muzzle shall be made in a manner that will not cause injury to the dangerous dog or interfere with its vision or respiration but shall prevent it from biting any human being or animal;

(3) Fail to notify the Mayor within 24 hours if a dangerous dog is on the loose, is unconfined, has attacked another animal, has attacked a human being, has died, has been sold, or has been given away. If the dangerous dog has been sold or given away the owner shall also provide the Mayor with the name, address, and telephone number of the new owner of the dangerous dog;

(4) Fail to maintain the liability insurance coverage required under § 6-1021.4;

(5) Fail to surrender a dangerous dog to the Mayor for safe confinement pending a disposition of the case when there is a reason to believe that the dangerous dog is a significant threat to the public health and safety; or

(6) Fail to comply with any special security or care requirements established by the Mayor pursuant to § 6-1021.3. (Oct. 18, 1988, D.C. Law 7-176, § 6, 35 DCR 4787.)

Section references. — This section is referred to in §§ 6-1021.3 and 6-1021.6.

Legislative history of Law 7-176. — See note to § 6-1021.1.

§ 6-1021.6. Penalties.

(a) An owner of a dangerous dog who violates the provisions of §§ 6-1021.4 and 6-1021.5 shall be fined up to \$300 for the first offense and up to \$500 for each subsequent offense.

(b) An owner of a dangerous dog that causes serious injury to or kills a human being or a domestic animal without provocation shall be fined up to \$10,000.

(c) A violation of this chapter shall be a civil infraction for purposes of § 6-2701 et seq. Civil fines, penalties, and fees may be imposed as sanctions for

any infraction of the provisions of this chapter, or the rules issued under authority of this chapter, pursuant to § 6-2701 et seq. Adjudication of any infractions shall be pursuant to § 6-2701 et seq. (Oct. 18, 1988, D.C. Law 7-176, § 7 (a)-(c), 35 DCR 4787.)

Legislative history of Law 7-176. — See note to § 6-1021.1.

§ 6-1021.7. Annual dangerous dog licensing drive; educational program.

(a) The Mayor shall conduct an annual dangerous dog licensing drive in order to ensure compliance with the provisions of this chapter.

(b) Within 180 days of October 18, 1988, the Mayor shall implement an educational campaign for the public on provisions of this act and existing laws concerning animal control. (Oct. 18, 1988, D.C. Law 7-176, § 8, 35 DCR 4787.)

Legislative history of Law 7-176. — See note to § 6-1021.1.

§ 6-1021.8. Rules.

The Mayor shall, pursuant to subchapter I of Chapter 15 of Title 1, issue rules to implement the provisions of this chapter. (Oct. 18, 1988, D.C. Law 7-176, § 10, 35 DCR 4787.)

Legislative history of Law 7-176. — See note to § 6-1021.1.

§ 6-1022. Pet ownership policy established.

Notwithstanding any other provision of law, the owner or operator of locally assisted housing accommodations for the elderly or handicapped shall not:

(1) As a condition of tenancy or otherwise, prohibit or prevent an elderly or handicapped tenant from owning common household pets or keeping common household pets in the rental unit of the tenant; or

(2) Discriminate against any person in connection with admission to, or continued occupancy of, that rental unit by reason of the ownership of common household pets by that person or the presence of common household pets in the rental unit of that person. (Mar. 16, 1989, D.C. Law 7-181, § 3, 35 DCR 7715.)

Legislative history of Law 7-181. — See note to § 6-1021.

§ 6-1023. Exception.

(a) Nothing in this subchapter shall be construed to prohibit any owner or operator of a locally assisted housing accommodation for the elderly or handicapped or any local housing authority from requiring the removal from any rental unit any common household pet whose conduct or condition is duly determined to constitute a threat or nuisance to the health or safety of the

other occupants of the housing accommodation. The owner or operator of a locally assisted housing accommodation shall regulate pet ownership in accordance with rules established pursuant to § 6-1025.

(b) No pet shall be kept in violation of health statutes or under circumstances constituting cruelty to animals as set forth in § 22-801. (Mar. 16, 1989, D.C. Law 7-181, § 4, 35 DCR 7715.)

Legislative history of Law 7-181. — See note to § 6-1021.

§ 6-1024. Civil infractions.

Any person who violates the provisions of this subchapter shall be fined not more than \$300 for each violation. A violation of this subchapter shall be a civil infraction for purposes of § 6-2701 et seq. Civil fines, penalties, and fees may be imposed as sanctions for any infraction of the provisions of this subchapter, or the rules issued under the authority of this subchapter, pursuant to § 6-2701 et seq. Adjudication of any infractions shall be pursuant to § 6-2701 et seq. (Mar. 16, 1989, D.C. Law 7-181, § 5, 35 DCR 7715.)

Legislative history of Law 7-181. — See note to § 6-1021.

§ 6-1025. Rules.

Within 180 days of March 16, 1989, the Mayor shall promulgate proposed rules, in accordance with subchapter I of Chapter 15 of Title 1, to carry out the purposes of this subchapter. The proposed rules shall include guidelines, applicable to owners and tenants of locally assisted housing accommodations, on keeping common household pets, pet size, types of pets, potential financial obligation of tenants, and standards of pet care. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the regulations, in whole or in part, by resolution within the 45-day review period, the proposed rules shall be deemed approved. (Mar. 16, 1989, D.C. Law 7-181, § 6, 35 DCR 7715.)

Section references. — This section is referred to in § 6-1023.

Legislative history of Law 7-181. — See note to § 6-1021.

CHAPTER 10B. REGULATION OF HORSE-DRAWN CARRIAGE TRADE.

Sec.	Sec.
6-1031. Definitions.	6-1037. Weather conditions.
6-1032. Horse-drawn carriage trade regulation.	6-1038. Stables.
6-1033. Examination of horses.	6-1039. Loading.
6-1034. Identification card.	6-1040. Sick or injured horses.
6-1035. Care and use of horses in horse-drawn carriage trade.	6-1041. Maintenance of records.
6-1036. Carriage and equipment.	6-1042. Penalties.
	6-1043. Rules.

§ 6-1031. Definitions.

For the purposes of this chapter, the term:

(1) "Animal control officer" means any employee or legally authorized agent of the District of Columbia ("District") Animal Control Agency as provided in § 6-1002.

(2) "Carriage" means a device by which a person is transported or in which a person rides, for hire, and that is designed to be pulled or drawn by a horse in the horse-drawn carriage trade. The term "carriage" includes a wagon, cart, vehicle, or similar transportation device.

(3) "Custodian" means a person who has the immediate possession, bailment, custody, use, or control of a horse. For the purposes of this chapter, the term "custodian" includes a driver.

(4) "Drive" means the process of operating, transporting, driving, pulling, or hauling a horse-drawn carriage.

(5) "Driver" means a person licensed to drive, steer, transport, or operate a carriage or horse used in the horse-drawn carriage trade.

(6) "Driver's license" means a valid document issued by the Mayor to operate a motor vehicle.

(7) "Horse" means a large solid-hoofed herbivorous domesticated mammal or similar animal that belongs to the *Equus caballus* family and weighs at least 1,100 pounds, and that is used for the purpose of driving, pulling, or hauling a carriage, or for the purposes of a performance. For the purposes of this chapter, the term "horse" shall not include any animal owned by the District government or the United States government that is used solely for law enforcement purposes, or any animal in the custody of the National Zoological Park.

(8) "Horse-drawn carriage trade" means a person or business that operates an enterprise, for hire, or as a contractual service, for the purpose of conveying persons or goods through the use of a horse to pull or haul a wagon, cart, carriage, vehicle, or similar device along the streets and byways in the District. The term "horse-drawn carriage trade" shall not include the use of a horse in a parade or in a funeral for which a permit is issued.

(9) "Identification card" means a document devised, supplied, and certified by the Mayor of the District, and signed and dated by a licensed veterinarian which shall include:

(A) The date of the last physical examination of the horse;

(B) A description of the horse, including sex, age, height, color, markings, and any other information that may facilitate identification of the horse;

- (C) The stamina and physical condition of the horse;
- (D) Any condition that might restrict or affect the use or movement of the horse;
- (E) A photograph of the horse;
- (F) An identification number;
- (G) The name, address, and telephone number of the establishment where the horse is stabled; and
- (H) The name, address, and telephone number of the owner of the horse.

(10) "License" means a valid permit or other document issued by the Mayor to a person or business for the purpose of operating a horse-drawn carriage trade enterprise.

(11) "Licensed veterinarian" means a person who is licensed to practice veterinary medicine.

(12) "Operator" means the proprietor or the agent of a proprietor of a horse-drawn carriage trade enterprise or a stable.

(13) "Owner" means a person who is vested with the ownership, control, or title of a horse-drawn carriage trade, horse, or stable.

(14) "Person" means an individual, firm, partnership, association, or group or combination acting in concert, whether as a principal, employer, employee, agent, servant, trustee, fiduciary, receiver, or any other type of legal or personal representative.

(15) "Police officer" means a sworn member of the Metropolitan Police Department.

(16) "Stable" means a barn, establishment, or similar appropriate facility where a horse is permanently or temporarily boarded, housed, or maintained. (Mar. 7, 1991, D.C. Law 8-224, § 2, 38 DCR 207.)

Section references. — This section is referred to in § 6-1034.

Legislative history of Law 8-224. — Law 8-224, the "Regulation of the Horse-Drawn Carriage Trade Act of 1990," was introduced in Council and assigned Bill No. 8-204, which was referred to the Committee on Finance and

Revenue. The Bill was adopted on first and second readings on December 4, 1990, and December 18, 1990, respectively. Signed by the Mayor on December 27, 1990, it was assigned Act No. 8-307 and transmitted to both Houses of Congress for its review.

§ 6-1032. Horse-drawn carriage trade regulation.

(a) It shall be unlawful to operate a horse-drawn carriage trade in the District without a license and an identification card issued by the Mayor.

(b) Upon application on a form devised by the Mayor and the payment of a fee not to exceed \$100, a person may be issued a license to operate a horse-drawn carriage trade in the District.

(c) Upon application on a form devised by the Mayor and the payment of a fee not to exceed \$30, an owner, operator, or custodian may be issued an identification card for each horse used in the operation of a horse-drawn carriage trade in the District.

(d) No person shall drive or otherwise operate a carriage engaged in the horse-drawn carriage trade unless he or she:

- (1) Is 18 years of age;

(2) Has received at least 35 hours of training in the operation of a horse-drawn carriage as provided and certified in writing by the owner or operator of a horse-drawn carriage trade, 15 hours of which shall include an apprenticeship under the supervision of a licensed horse-drawn carriage driver;

(3) Presents a statement from a licensed physician that certifies that he or she is in good physical condition and is free of defective vision not corrected by eyeglasses or contact lenses, epilepsy, vertigo, or other medical disabilities which may substantially impair his or her ability to operate a horse-drawn carriage or to control a horse; and

(4) Has completed a written examination devised by the Mayor which shall include, but shall not be limited to:

(A) Knowledge of the traffic laws and regulations, including passage of the written portion of the driver's license test;

(B) Proper equine grooming, care, equipment, nutrition, and first aid; and

(C) Operation of a horse-drawn carriage.

(e) No person shall drive or operate a horse-drawn carriage on any public street or byway in the District:

(1) Between the hours of 5:00 a.m. and 10:00 a.m., on Monday through Friday, excluding legal holidays;

(2) Between the hours of 4:00 p.m. and 6:30 p.m., on Monday through Friday, excluding legal holidays, provided however, that this restriction shall not apply to the area bounded by 15th Street, N.W., on the West, Jefferson Drive, N.W., on the South, 1st Street, N.W., on the East, and Madison Drive, N.W., on the North;

(3) Between the hours of 1:30 a.m. and 5:00 a.m. on any day; and

(4) On any day or at any time that the Chief of the Metropolitan Police Department makes a specific determination that the horse-drawn carriage trade would be inconsistent with other special events or public safety requirements.

(f) The driver of a horse-drawn carriage shall:

(1) Possess and display at all times his or her license to operate a horse-drawn carriage in the front and passenger compartments of the carriage;

(2) Possess a valid identification card issued by the Mayor;

(3) Obey and observe all traffic laws;

(4) Not smoke, eat, drink, or wear headphones while the carriage is in motion;

(5) Not drive the carriage at a speed that exceeds a walk, except as necessary to cross a traffic intersection or to refrain from impeding traffic;

(6) Leave the horse-drawn carriage unattended at any time;

(7) Not drive the carriage at any time when a passenger is standing in the carriage or not seated securely inside of the carriage;

(8) Maintain both hands on the reins and be seated at all times the carriage is in motion; and

(9) Provide humane care and treatment of the horse under his or her direct supervision and control at all times. (Mar. 7, 1991, D.C. Law 8-224, § 3, 38 DCR 207.)

Legislative history of Law 8-224. — See note to § 6-1031.

§ 6-1033. Examination of horses.

(a) The owner, operator, or custodian of each horse engaged in the horse-drawn carriage trade shall have the horse examined by a licensed veterinarian at intervals of not more than 12 months.

(b) The examinations shall include, but not be limited to, the following:

(1) The general physical condition of the horse;

(2) An inspection of the eyes, teeth, legs, hooves, shoes, and cardiovascular system of the horse;

(3) The stamina and physical ability of the horse to engage in the horse-drawn carriage trade;

(4) An inspection for a recurrence of prior injuries; and

(5) An inspection for disease or other deficiencies.

(c) The examination shall include a certification from the licensed veterinarian that the horse is physically fit to engage in the horse-drawn carriage trade and is free of any disease or internal parasites. The certification shall be entered on the identification card provided for in § 6-1035. (Mar. 7, 1991, D.C. Law 8-224, § 4, 38 DCR 207; Feb. 5, 1994, D.C. Law 10-68, § 16(a), 40 DCR 6311.)

Effect of amendments. — D.C. Law 10-68 substituted “§ 6-1035” for “§ 6-1034” in (c).

Legislative history of Law 8-224. — See note to § 6-1031.

Legislative history of Law 10-68. — D.C. Law 10-68, the “Technical Amendments Act of 1993,” was introduced in Council and assigned Bill No. 10-166, which was referred to the Committee of the Whole. The Bill was adopted

on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 23, 1993, it was assigned Act No. 10-107 and transmitted to both Houses of Congress for its review. D.C. Law 10-68 became effective on February 5, 1994.

References in text. — The reference to “§ 6-1035” in (c) should probably be to “§ 6-1034.”

§ 6-1034. Identification card.

(a) The owner, operator, or custodian of a horse engaged in the horse-drawn carriage trade shall have available for immediate inspection by the Mayor or his or her designee, a police officer, or an animal control officer at all times when a horse is on any street or public byway in the District, an identification card as defined in § 6-1031(9).

(b) In an instance where the owner rents, hires, or places the horse in the care or custody of another person, he or she shall provide that person with the identification card required by subsection (a) of this section.

(c) The Mayor shall certify the identification card following an examination of the horse by a licensed veterinarian. (Mar. 7, 1991, D.C. Law 8-224, § 5, 38 DCR 207.)

Section references. — This section is referred to in § 6-1033.

Legislative history of Law 8-224. — See note to § 6-1031.

§ 6-1035. Care and use of horses in horse-drawn carriage trade.

(a) An owner, operator, or custodian of a horse engaged in the horse-drawn carriage trade shall:

- (1) Not use, work, drive, ride, or require labor from a horse for more than 8 hours in any 24-hour period;
- (2) Provide for adequate rest periods for a horse during the 8 hours of use;
- (3) Provide the horse with food and drinking water from a clean container of sufficient size and in good condition during the regular intervals during the 8 hours of use;
- (4) Drape the body of the horse from forelegs to hind legs with a warm covering during times of cold or inclement weather;
- (5) Park the horse in an area of shade whenever practicable during rest periods;
- (6) Not overdrive or overload a horse as evidenced by physical stress, strain, or exhaustion of the horse; and
- (7) Not beat or prod a horse to maintain a fast gait in any way that will cause pain or injury to the horse.

(b) An owner, operator, or custodian of a horse engaged in the horse-drawn carriage trade shall not use a horse to draw a carriage unless:

- (1) The horse is in good health in accordance with standards established by the Mayor by rule;
- (2) The horse weighs at least 1,100 pounds; and
- (3) The hooves of the horse are properly shod and trimmed utilizing rubber compound shoes on the front 2 hooves and either rubber or open steel borium cork tip shoes on the 2 rear hooves. (Mar. 7, 1991, D.C. Law 8-224, § 6, 38 DCR 207; Feb. 5, 1994, D.C. Law 10-68, § 16(b), 40 DCR 6311.)

Effect of amendments. — D.C. Law 10-68 inserted “or” preceding “open” in (b)(3).

Legislative history of Law 10-68. — See note to § 6-1033.

Legislative history of Law 8-224. — See note to § 6-1031.

§ 6-1036. Carriage and equipment.

(a) An owner, operator, or custodian of a horse engaged in the horse-drawn carriage trade shall:

- (1) Provide that the carriage used is in good operating condition, the axles are well-greased, and that all operating mechanisms are in good working order;
- (2) Provide that the carriage is equipped with hydraulic brakes in good working condition and set in a locked position when the carriage is not in motion;
- (3) Provide that the saddle, harness, shoes, bridle, and any other equipment for the horse fits properly, is in good working condition, and shall not cause injury or pain to the horse;
- (4) Not use curb bits, twisted wire, twisted wire snaffles, spurs, bucking straps, flank straps, or similar devices;

(5) Inspect daily, all horses and all equipment at the time of departure from and return to the stable; and

(6) Provide that all horses are equipped with a diaper that is constructed of a sturdy material and is properly fitted to the horse to ensure comfort.

(b) No carriage engaged in the horse-drawn carriage trade shall be driven or operated on a public street or byway of the District unless the owner or operator of the carriage has obtained a valid registration and metal license plate issued by the Mayor pursuant to a procedure and fees established by the Mayor by rule.

(c) A carriage used in the horse-drawn carriage trade shall:

(1) Have conspicuously displayed on the rear of the carriage at all times a valid license plate provided for in subsection (b) of this section;

(2) Be equipped with a slow-moving vehicle emblem to be attached to the rear of the carriage;

(3) Be maintained in a safe and sanitary condition;

(4) Not drive or transport more than 6 passengers at 1 time, excluding the driver or operator of the carriage;

(5) Not drive or transport any person when a person other than a licensed-driver or an apprenticed-driver is seated in the driver's seat of the carriage; and

(6) Not have any legend, slogan, logo, or other exterior sign on the carriage, other than its legal license plates and the name and telephone number of the horse-drawn carriage in letters not to exceed 3 inches in height.

(d) The Mayor may, by rule, establish additional inspection requirements for a carriage and other equipment used in the horse-drawn carriage trade. (Mar. 7, 1991, D.C. Law 8-224, § 7, 38 DCR 207.)

Legislative history of Law 8-224. — See note to § 6-1031.

§ 6-1037. Weather conditions.

(a) An owner, operator, or custodian of a horse engaged in the horse-drawn carriage trade shall not drive, use, or work a horse on a public street or byway in the District:

(1) During periods when the temperature exceeds 89 degrees Fahrenheit, as determined and announced by the National Weather Service;

(2) During periods when the temperature is below 25 degrees Fahrenheit, as determined and announced by the National Weather Service;

(3) During periods when it is snowing; or

(4) During other periods determined by the Mayor by rule as being dangerous or unsuitable.

(b) A horse in use at the time described in subsection (a)(1), (2), or (3) of this section, shall be immediately returned by its owner, operator, or custodian by the most direct route to a stable. (Mar. 7, 1991, D.C. Law 8-224, § 8, 38 DCR 207.)

Legislative history of Law 8-224. — See note to § 6-1031.

§ 6-1038. Stables.

(a) The owner, operator, or custodian of a horse engaged in the horse-drawn carriage trade shall house, quarter, or maintain a horse in a lighted, clean, dry, and properly ventilated stable in which the horse shall be able to turn around easily in a stall.

(b) The owner, operator, or custodian of a horse engaged in the horse-drawn carriage trade shall clean the stall in which a horse is housed, quartered, or maintained daily and shall provide sufficient bedding of straw, shavings, or other suitable hygienic material that shall be changed as often as necessary to maintain it in a clean and dry condition.

(c) The owner, operator, or custodian of a horse engaged in the horse-drawn carriage trade shall provide the stall in which the horse is housed, quartered, or maintained with clean, fresh water and with an adequate and substantial daily supply of hay and grain that is free from contamination and mold to meet the normal daily feeding requirements for the condition, size, and work schedule of the horse.

(d) The owner, operator, or custodian of a horse engaged in the horse-drawn carriage trade shall provide each stall with a clean block of salt at all times and with blankets for the horse during cold weather periods as necessary.

(e) The full name, current business address, and business and home telephone numbers of the owner, operator, or custodian of a horse engaged in the horse-drawn carriage trade, and the owner or operator of the stable, shall be legibly stenciled and conspicuously displayed, in at least 2-inch lettering, on the exterior of the stable entrance for emergency purposes. (Mar. 7, 1991, D.C. Law 8-224, § 9, 38 DCR 207.)

Legislative history of Law 8-224. — See note to § 6-1031.

§ 6-1039. Loading.

All horses shall be loaded or unloaded for transport in horse loading zones as designated by the Mayor. (Mar. 7, 1991, D.C. Law 8-224, § 10, 38 DCR 207.)

Legislative history of Law 8-224. — See note to § 6-1031.

§ 6-1040. Sick or injured horses.

(a) The owner, operator, or custodian of a horse engaged in the horse-drawn carriage trade that is in pain, sick, diseased, lame, or injured shall take action to obtain immediate veterinary treatment, care, and attention for the horse.

(b) An injured, sick, diseased, or lame horse shall not be sold or otherwise disposed of except in a humane manner.

(c) No person shall drive, use, or work an injured, sick, diseased, or lame horse in the horse-drawn carriage trade. (Mar. 7, 1991; D.C. Law 8-224, § 11, 38 DCR 207.)

Legislative history of Law 8-224. — See note to § 6-1031.

§ 6-1041. Maintenance of records.

(a) The owner or operator of a horse-drawn carriage trade shall maintain or require his or her driver to maintain a daily record of travel for each carriage used, which shall include:

- (1) The name of the driver;
- (2) The driver's license number;
- (3) The horse-drawn carriage trade license number;
- (4) The identification card number of the horse that hauls or pulls the carriage;
- (5) The date;
- (6) The hours of operation;
- (7) The specific location, time, and number of passengers for each ride in the carriage;
- (8) The rest, water, and feeding times for the horse; and
- (9) A description of any and all traffic accidents.

(b) The owner or operator of a horse-drawn carriage trade shall maintain a complete log of all records at his or her place of business. (Mar. 7, 1991, D.C. Law 8-224, § 12, 38 DCR 207.)

Legislative history of Law 8-224. — See note to § 6-1031.

§ 6-1042. Penalties.

(a) A person who violates any provision of this chapter shall be fined up to \$300 for the 1st offense and up to \$500 for each subsequent offense.

(b) Any owner, operator, or custodian of a horse engaged in the horse-drawn carriage trade who causes serious intentional injury to the horse by neglect or inhumane treatment shall be fined up to \$2,500.

(c) A violation of this chapter shall be a civil infraction for purposes of Chapter 27 of this title. Civil fines, penalties, and fees may be imposed as sanctions for any infraction of the provisions of this chapter, or the rules issued under authority of this chapter, pursuant to Chapter 27 of this title. Adjudication of any infraction shall be pursuant to Chapter 27 of this title. (Mar. 7, 1991, D.C. Law 8-224, § 13, 38 DCR 207; Feb. 5, 1994, D.C. Law 10-68, § 16(c), 40 DCR 6311.)

Effect of amendments. — D.C. Law 10-68 ratified previously made stylistic internal reference changes in (c).

Legislative history of Law 8-224. — See note to § 6-1031.

Legislative history of Law 10-68. — See note to § 6-1033.

§ 6-1043. Rules.

(a) Within 120 days of March 7, 1991, the Mayor shall, pursuant to subchapter I of Chapter 15 of Title 1, issue rules to implement the provisions of this chapter.

(b) The proposed rules shall establish travel routes for and boundaries of the operation of the horse-drawn carriage trade.

(c) The proposed rules shall establish an appropriate level of liability insurance coverage for the owner or operator of a horse-drawn carriage trade.

(d) The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day period, the proposed rules shall be deemed approved. (Mar. 7, 1991, D.C. Law 8-224, § 14, 38 DCR 207.)

Legislative history of Law 8-224. — See note to § 6-1031.

CHAPTER 11. WEEDS AND PLANT DISEASES.

Sec.

6-1101. Duty to remove weeds 4 inches in height; notice; penalties for failure to comply; adjudications.

6-1102. Removal of weeds by Mayor.

Sec.

6-1103. Prosecutions.

6-1104. Plant diseases and insect pest control.

6-1105. Penalty.

§ 6-1101. Duty to remove weeds 4 inches in height; notice; penalties for failure to comply; adjudications.

It shall be the duty of the owner, occupant, or agent in charge of any land in the City of Washington, or in the more densely populated suburbs of said City, to remove from such land any weeds thereon of 4 or more inches in height within 7 days (Sundays and legal holidays excepted) after notice from the Director of the Department of Human Services so to do, and upon failure to comply with such notice he or she shall, on conviction thereof, be punished by a fine of not more than \$10 for each day said notice is not complied with. Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this chapter, or any rules or regulations issued under the authority of this section, pursuant to subchapters I through III of Chapter 27 of this title. Adjudication of any infraction of this section shall be pursuant to subchapters I through III of Chapter 27 of this title. (Mar. 1, 1899, 30 Stat. 959, ch. 326, § 1; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; 1973 Ed., § 6-901; Oct. 5, 1985, D.C. Law 6-42, § 471, 32 DCR 4450.)

Section references. — This section is referred to in § 6-1103.

Legislative history of Law 6-42. — Law 6-42, the "Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985," was introduced in Council and assigned Bill No. 6-187, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was

adopted on first and second readings on June 25, 1985, and July 9, 1985, respectively. Signed by the Mayor on July 16, 1985, it was assigned Act No. 6-60 and transmitted to both Houses of Congress for its review.

Office of Director of Public Health abolished. — See note to § 6-101.

§ 6-1102. Removal of weeds by Mayor.

Whenever there are upon any unoccupied land aforesaid weeds of 4 or more inches in height, and no person can be found in the District of Columbia who either is or claims to be the owner thereof, or who either represents or claims to represent such owner as aforesaid, the Mayor of the District of Columbia shall give notice, by publication twice a week in 1 daily newspaper published in the City of Washington aforesaid, requiring their removal. Said notice shall specify the land from which such weeds are to be removed, the character of the work to be done, and the time allowed for doing the same; and if such weeds be not removed within the time so specified it shall be the duty of said Mayor to cause their removal; and double the cost of such removal, including the cost of advertising, shall be a lien upon and shall be assessed by said Mayor as a tax against the property on which said weeds were located, and the said tax so assessed shall bear interest at the rate of 20 per centum per annum till paid, and shall be carried on the regular tax rolls of said District and be collected in

the manner provided for the collection of general taxes. (Mar. 1, 1899, 30 Stat. 959, ch. 326, § 2; 1973 Ed., § 6-902; Apr. 23, 1977, D.C. Law 1-128, § 2, 23 DCR 9692.)

Cross references. — As to authority of Council to make health and safety regulations, see § 1-319.

As to collection of taxes, see § 47-401 et seq.

Section references. — This section is referred to in § 6-1103.

Legislative history of Law 1-128. — Law 1-128, the "Nuisance Elimination Act of 1976," was introduced in Council and assigned Bill No. 1-303, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 23, 1976, and December 7, 1976, respectively. Enacted without signature by the Mayor on January 19, 1977, it was assigned Act No. 1-222 and transmitted to both Houses of Congress for its review.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commis-

sioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 6-1103. Prosecutions.

Prosecutions under §§ 6-1101 to 6-1103 shall be in the Superior Court of the District of Columbia, upon information filed by the Corporation Counsel for said District or 1 of his assistants. (Mar. 1, 1899, 30 Stat. 959, ch. 326, § 3; Mar. 3, 1901, 31 Stat. 1340, ch. 854, § 932; June 30, 1902, 32 Stat. 537, ch. 1329; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 6-903.)

§ 6-1104. Plant diseases and insect pest control.

(a) In order further to control and eradicate and to prevent the dissemination of dangerous plant diseases and insect infections and infestations, no plant or plant products for or capable of propagation, including nursery stock, hereinafter referred to as plants and plant products, shall be moved or allowed to be moved, shipped, transported, or carried by any means whatever into or out of the District of Columbia, except in compliance with such rules and regulations as shall be prescribed by the Secretary of Agriculture as hereinafter provided. Whenever the Secretary of Agriculture, after investigation, shall determine that any plants and plant products in the District of Columbia are infested or infected with insect pests and diseases and that any place, articles, and substances used or connected therewith are so infested or infected, written notice thereof shall be given by him to the owner or person in possession or control thereof, and such owner or person shall forthwith control or eradicate and prevent the dissemination of such insect pest or disease and shall remove, cut, or destroy such infested and infected plants, plant products, and articles and substances used or connected therewith, which are hereby declared to be

nuisances, within the time and in the manner required in said notice or by the rules and regulations of the Secretary of Agriculture. Whenever such owner or person cannot be found, or shall fail, neglect, or refuse to comply with the foregoing provisions of this section, the Secretary of Agriculture is hereby authorized and required to control and eradicate and prevent dissemination of such insect pest or disease and to remove, cut, or destroy infested or infected plants and plant products and articles and substances used or connected therewith, and the United States shall have an action of debt against such owner or persons for expenses incurred by the Secretary of Agriculture in that behalf. Employees of the Regulatory Division of the Department of Agriculture are hereby authorized and required to inspect places, plants, and plant products and articles and substances used or connected therewith whenever the Secretary of Agriculture shall determine that such inspections are necessary for the purposes of this section. For the purpose of carrying out the provisions and requirements of this section and of the rules and regulations of the Secretary of Agriculture made hereunder, and the notices given pursuant thereto, employees of the Regulatory Division of the Department of Agriculture shall have power with a warrant to enter into or upon any place and open any bundle, package, or other container of plants or plant products whenever they shall have cause to believe that infections or infestations of plant pests and diseases exist therein or thereon, and when such infections or infestations are found to exist, after notice by the Secretary of Agriculture to the owner or person in possession or control thereof and an opportunity by said owner or person to be heard, to destroy the infected or infested plants or plant products contained therein. The Superior Court of the District of Columbia shall have power, upon information supported by oath or affirmation showing probable cause for believing that there exists in any place, bundle, package, or other container in the District of Columbia any plant or plant product which is infected or infested with plant pests or disease, to issue warrants for the search for and seizure of all such plants and plant products.

(b) It shall be the duty of the Secretary of Agriculture, and he is hereby required, from time to time, to make and promulgate such rules and regulations as shall be necessary to carry out the purposes of this section, and any person who shall move or allow to be moved, or shall ship, transport, or carry, by any means whatever, any plant or plant products from or into the District of Columbia, except in compliance with the rules and regulations prescribed under this section, shall be punished, as is provided in § 6-1105. (Aug. 20, 1912, ch. 308, § 15; May 31, 1920, 41 Stat. 726, ch. 217; May 16, 1928, 45 Stat. 565, ch. 572; July 7, 1932, 47 Stat. 640, ch. 443; Mar. 26, 1934, 48 Stat. 486, ch. 89; Apr. 1, 1942, 56 Stat. 190, 192, ch. 207, §§ 1-4; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 6-904.)

Cross references. — As to return of property by Property Clerk, see § 4-157.

As to search warrants, see §§ 23-521 to 23-525.

§ 6-1105. Penalty.

Any person who shall violate any of the provisions of §§ 151—154, 156—161 and 162—164a of Title 7, United States Code, or who shall forge, counterfeit, alter, deface, or destroy any certificate provided for in said sections, or in the regulations of the Secretary of Agriculture, shall be deemed guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine not exceeding \$500 or by imprisonment not exceeding 1 year, or both such fine and imprisonment, in the discretion of the court: Provided, that no common carrier shall be deemed to have violated the provisions of §§ 152, 154, 156—161 and 162 of Title 7, United States Code, on proof that such carrier did not knowingly receive for transportation or transport nursery stock or other plants or plant products as such from 1 state, territory, or district of the United States into or through any other state, territory, or district; and it shall be the duty of the United States Attorneys diligently to prosecute any violations of §§ 151—154, 156—161 and 162—164a of Title 7, United States Code which are brought to their attention by the Secretary of Agriculture or which come to their notice by other means. (Aug. 20, 1912, 37 Stat. 318, ch. 308, § 10; 1973 Ed., § 6-905.)

Section references. — This section is referred to in § 6-1104.

CHAPTER 12. REPORTS OF CANCER AND MALIGNANT NEOPLASTIC DISEASES.

Sec.

6-1201. Mayor to issue rules.

6-1202. Confidentiality.

6-1203. Medical examination or treatment not required.

Sec.

6-1204. Penalties; prosecutions.

§ 6-1201. Mayor to issue rules.

The Mayor may, upon the advice of the Commissioner of Public Health and pursuant to subchapter I of Chapter 15 of Title 1, issue rules to prevent and monitor the occurrence of cancer in the District of Columbia. (July 27, 1951, 65 Stat. 124, ch. 241, § 1; 1973 Ed., § 6-1301; Feb. 21, 1986, D.C. Law 6-83, § 2(a), 32 DCR 7276.)

Legislative history of Law 6-83. — Law 6-83, the “Preventive Health Services Amendments Act of 1985,” was introduced in Council and assigned Bill No. 6-99, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on November 5, 1985, and November 19, 1985,

respectively. Signed by the Mayor on November 27, 1985, it was assigned Act No. 6-108 and transmitted to both Houses of Congress for its review.

Delegation of authority pursuant to Law 6-83. — See Mayor’s Order 86-165, September 19, 1986.

§ 6-1202. Confidentiality.

The Commissioner of Public Health shall use the records incident to a reported case of cancer for statistical and public health purposes only, and identifying information contained in these records shall be disclosed only when essential to safeguard the physical health of others. No person shall otherwise disclose or redisclose identifying information derived from these records unless:

- (1) The person reported gives his or her prior written permission;
- (2) A court finds, upon clear and convincing evidence and after granting the person reported an opportunity to contest the disclosure, that disclosure is essential to safeguard the physical health of others; or
- (3) The identifying information is exchanged with a cancer registry that is maintained by a state and the Commissioner of Public Health receives a satisfactory assurance from the cancer registry that the confidentiality of the identifying information shall be preserved. (July 27, 1951, 65 Stat. 124, ch. 241, § 2; 1973 Ed., § 6-1302; Feb. 21, 1986, D.C. Law 6-83, § 2(b), 32 DCR 7276; Sept. 11, 1990, D.C. Law 8-157, § 2, 37 DCR 4165.)

Section references. — This section is referred to in § 6-1204.

Legislative history of Law 6-83. — See note to § 6-1201.

Legislative history of Law 8-157. — Law 8-157, the “Preventive Health Services Amendment Act of 1990,” was introduced in Council

and assigned Bill No. 8-385, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on May 29, 1990, and June 12, 1990, respectively. Signed by the Mayor on June 18, 1990, it was assigned Act No. 8-219 and transmitted to both Houses of Congress for its review.

§ 6-1203. Medical examination or treatment not required.

Nothing in this chapter or any rules or regulations issued pursuant to this chapter shall be construed to compel a person with cancer to submit to medical examination or treatment. (July 27, 1951, 65 Stat. 124, ch. 241, § 3; 1973 Ed., § 6-1303; Feb. 21, 1986, D.C. Law 6-83, § 2(c), 32 DCR 7276.)

Legislative history of Law 6-83. — See note to § 6-1201.

§ 6-1204. Penalties; prosecutions.

(a) Except as provided in subsection (b) of this section, any person who willfully violates this chapter or any rule or regulation issued pursuant to this chapter shall be guilty of a misdemeanor and, upon conviction, subject to a fine not exceeding \$1,000.

(b) Any person who willfully discloses, receives, uses, or permits the use of information in violation of § 6-1202 shall be guilty of a misdemeanor and, upon conviction, subject to a fine not exceeding \$5,000, imprisonment for not more than 90 days, or both.

(c) Prosecution shall be in the Superior Court of the District of Columbia by information signed by the Corporation Counsel. (July 27, 1951, 65 Stat. 124, ch. 241, § 4; July 8, 1963, 77 Stat. 77, Pub. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 6-1304; Feb. 21, 1986, D.C. Law 6-83, § 2(d), 32 DCR 7276.)

Legislative history of Law 6-83. — See note to § 6-1201.

CHAPTER 13. FEDERAL GOVERNMENT RESTAURANTS.

Sec.

6-1301. Health regulations applicable to federal government restaurants; exceptions.

§ 6-1301. Health regulations applicable to federal government restaurants; exceptions.

(a) The regulations now or hereafter adopted or promulgated by the Mayor of the District of Columbia or the Council of the District of Columbia for the protection of health, including the penalty provisions of such regulations, shall extend and apply to all restaurants, coffee shops, cafeterias, short-order cafes, luncheonettes, soda fountains, and all other eating and drinking establishments, operated within the District of Columbia on premises owned or held under lease by the government of the United States or any federal department or agency, irrespective of whether such establishments are operated by the United States or any federal department or agency or by any other person, firm, association, or corporation, and also irrespective of whether such establishments are operated for profit or otherwise.

(b) This section shall not apply to the United States Senate and House of Representatives restaurants. (Dec. 20, 1944, 58 Stat. 826, ch. 613; 1973 Ed., § 6-1101.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Sections 401 and 402 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The

District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

CHAPTER 14. OFFICE OF EMERGENCY PREPAREDNESS.

Sec.	Sec.
6-1401. Declaration of intent; "civil defense" defined.	6-1404. "Metropolitan Police Department", "Fire Department" defined.
6-1402. Office of Emergency Preparedness authorized; Director and other personnel; compensation.	6-1405. Powers and duties.
6-1403. Appointment of member of Police Department or Fire Department to position in Office of Emergency Preparedness.	6-1406. Limitation of liability.
	6-1407. Appropriations authorized.
	6-1408. Annual report.
	6-1409. Interstate civil defense compacts.

§ 6-1401. Declaration of intent; "civil defense" defined.

Because of the existing possibility of the occurrence of disaster of unprecedented destructiveness resulting from enemy attack, sabotage, or other hostile action, it is the intent of Congress that plans and programs to provide necessary protection, relief, and assistance for persons and property in the District of Columbia in the event such disaster shall occur or become imminent so as to require such protection, relief, and assistance, should be developed. As used in this chapter, the term "civil defense" shall mean all activities necessary for the development and execution of such plans and programs, unless the context indicates a different meaning. (Aug. 11, 1950, 64 Stat. 438, ch. 686, § 1; 1973 Ed., § 6-1201.)

§ 6-1402. Office of Emergency Preparedness authorized; Director and other personnel; compensation.

(a) To carry out the purposes of this chapter, the Mayor of the District of Columbia is authorized to establish in the municipal government of such District an Office of Emergency Preparedness to consist of a Director and such other personnel as may be needed. Such Director shall be the executive head of such Office.

(b) Notwithstanding the limitation of any law, there may be employed in such Office of Emergency Preparedness any person who has been retired from any of the uniformed services of the United States or any office or position in the federal or District governments, and except as hereinafter provided, while so employed in such Office of Emergency Preparedness any such retired person may receive the compensation authorized for such employment or the retirement compensation or annuity, whichever he may elect, and upon the termination of such employment, he shall be restored to the same status as a retired officer or employee with the same retirement compensation or annuity to which he was entitled before having been employed in such Office of Emergency Preparedness. While any person who has been retired from any of the uniformed services of the United States is so employed in such Office of Emergency Preparedness, he may receive the compensation authorized for such employment and his retired or retirement pay, subject to § 5532 of Title 5, United States Code. (Aug. 11, 1950, 64 Stat. 438, ch. 686, § 2; Aug. 19, 1964, 87 Stat. 489, Pub. L. 88-448, title IV, § 401(b); 1973 Ed., § 6-1202.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Government Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor and the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Office of Civil Defense abolished. — The Office of Civil Defense was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 45 of the Board of Commissioners, dated June 26, 1953, and as amended October 22, 1953, established under the Board of Commissioners, a Citizens' Civil Defense Advisory Council to advise and consult with the Board and the Director of Civil Defense on matters of basic civil defense policies. The Or-

der describes the purposes and functions of the new Council, and abolished the previous Civil Defense Advisory Council. Reorganization Order No. 49, as amended November 10, 1953, established under the supervision and control of a Commissioner, an Office of Civil Defense headed by a Director. The Order set forth the purpose, organization, and functions of the new Office of Civil Defense. The previous Office of Civil Defense was abolished and its functions and positions together with all personnel, property, records, and unexpended funds relating to those functions and positions were transferred to the new Office of Civil Defense. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Reorganization Order No. 49 was rescinded by Commissioner's Order No. 71-259, dated July 26, 1971, which established a new Office of Civil Defense. Organization Order No. 51 of the Commissioner of the District of Columbia, dated December 27, 1974, established in the Executive Office of the Commissioner, a new Office of Civil Defense, headed by a Director, and prescribed the purposes and functions thereof. The Order replaced and rescinded Commissioner's Order No. 71-259, dated July 26, 1971, as amended by Commissioner's Order No. 73-156, July 5, 1973. The name of the Office of Civil Defense was changed to the Office of Emergency Preparedness by Mayor's Order No. 76-49, dated January 23, 1976.

§ 6-1403. Appointment of member of Police Department or Fire Department to position in Office of Emergency Preparedness.

The Mayor of the District of Columbia is authorized to appoint a member of the Metropolitan Police Department or a member of the Fire Department of the District of Columbia to any position in the Office of Emergency Preparedness (authorized to be abolished by Reorganization Plan No. 5 of 1952), with the salary provided by law for such position, chargeable to the appropriation for the newly established office or agency: Provided, that during the tenure of his appointment such member so appointed shall be deemed to be a member of such Metropolitan Police Department or such Fire Department, as the case may be, for all purposes of rank, seniority, allowances, privileges and benefits, including retirement and disability benefits under the provisions of §§ 4-607 to 4-630, to the same extent as though the appointment had not been made, and at the termination of such appointment he shall be entitled to resume his status within the Metropolitan Police Department or Fire Department, as the case may be, which shall include any promotion in rank to which he may have become entitled: Provided further, that retirement and disability benefits and salary deductions shall be based on the salary of the rank or position held in

the Metropolitan Police Department or the Fire Department, as the case may be, prior to his appointment to such position in such office or agency succeeding to the functions of the Office of Emergency Preparedness or the salary of the position or rank he would have attained in the Metropolitan Police Department or the Fire Department had his appointment to such position in such office or agency not been made, whichever is greater. (May 21, 1951, 65 Stat. 44, ch. 102; July 6, 1953, 67 Stat. 139, ch. 179, § 1; 1973 Ed., § 6-1202a.)

Section references. — This section is referred to in § 6-1404.

References in text. — “Reorganization Plan No. 5 of 1952,” referred to near the beginning of this section, provided for the abolition of the Office of Civil Defense and the Office of the Director of Civil Defense by not later than June 30, 1953.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Office of Civil Defense abolished. — See note to § 6-1402.

§ 6-1404. “Metropolitan Police Department”, “Fire Department” defined.

As used in § 6-1403, the terms “Metropolitan Police Department” and “Fire Department” shall include, respectively, offices or agencies succeeding to the functions of such departments pursuant to Reorganization Plan No. 5 of 1952. (July 6, 1953, 67 Stat. 140, ch. 179, § 1; 1973 Ed., § 6-1202b.)

§ 6-1405. Powers and duties.

The Office of Emergency Preparedness is authorized and directed, subject to the direction and control of the Mayor of the District:

(1) To prepare a comprehensive plan and program for civil defense, such plan and program to be integrated into and coordinated with the civil defense plans of the federal government, and of nearby states and appropriate political subdivisions thereof;

(2) To institute training programs and public information programs; to organize, equip, and train civil defense units, and to utilize regularly employed personnel of the government of the District of Columbia for service in and within such civil defense units and to train such personnel for such service; to expand existing agencies of the District government concerned with civil defense; and to take all other preparatory steps including the partial or full mobilization of civil defense organizations in advance of actual disaster;

(3) To make such studies and surveys of the resources and capabilities of the District for civil defense, and to plan for the most efficient emergency use thereof;

(4) To develop and enter into mutual aid agreements with states or political subdivisions thereof for reciprocal civil defense aid and mutual assistance in case of disaster too great to be dealt with unassisted. Such agreements may include the exchange of food, clothing, medicines, and other supplies; emergency housing; engineering services; police services; medical and nursing services; firefighting, rescue, transportation, and construction services and equipment; personnel necessary to provide or conduct these services; and such other supplies, equipment, facilities, personnel, and services as may be needed. Such agreements shall be consistent with the national civil defense plan and program. In time of emergency it shall be the duty of each agency and organization to render assistance in accordance with the provisions of such mutual aid agreements;

(5) To employ such technical, clerical, stenographic, and other personnel and make such expenditures within appropriations thereof or from other funds made available for purposes of civil defense, as may be necessary to carry out the purposes of this chapter;

(6) To cooperate with governmental and nongovernmental agencies, organizations, associations, and other entities, and coordinate the activities of all organizations for civil defense within the District;

(7) To accept from the United States or from any officer or agency thereof all facilities, supplies, and funds that may from time to time be offered to the District of Columbia, and to agree to such terms, conditions, rules, and regulations as may be imposed in connection with such offer;

(8) To utilize the services, equipment, supplies, and facilities of existing departments, offices, and agencies of the District to the maximum extent practicable, and the officers and personnel of all such departments, offices, and agencies are directed to cooperate with and extend such services and supply such equipment, supplies, and facilities to the said Director upon request, and, when authorized by the Mayor, appropriations available to the District of Columbia may be used to match financial contributions made by any department or agency of the United States to the government of the District for the purchase of civil defense equipment and supplies;

(9) To perform such other functions as may be assigned by the Mayor of the District of Columbia. (Aug. 11, 1950, 64 Stat. 439, ch. 686, § 3; Apr. 5, 1952, 66 Stat. 44, ch. 159, § 1; 1973 Ed., § 6-1203; Oct. 26, 1973, Pub. L. 93-140, § 17, 87 Stat. 507; June 28, 1977, D.C. Law 2-12, § 6(c), 24 DCR 1442; Mar. 3, 1979, D.C. Law 2-139, § 3205(tt), 25 DCR 5740.)

Cross references. — As to authority to accept volunteer services, see §§ 1-304 to 1-308.

As to effective date of D.C. Law 2-139, see § 1-637.1.

Section references. — This section is referred to in § 1-637.1.

Legislative history of Law 2-12. — Law 2-12, the "Volunteers Services Act of 1977," was introduced in Council and assigned Bill No. 2-87, which was referred to the Committee on Government Operations. The Bill was adopted

on first and second readings on March 22, 1977 and April 5, 1977, respectively. Signed by the Mayor on April 26, 1977, it was assigned Act No. 2-33 and transmitted to both Houses of Congress for its review.

Legislative history of Law 2-139. — Law 2-139, the "District of Columbia Government Comprehensive Merit Personnel Act of 1978," was introduced in Council and assigned Bill No. 2-10, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on Octo-

ber 17, 1978 and October 31, 1978, respectively. Signed by the Mayor on November 22, 1978, it was assigned Act No. 2-300 and transmitted to both Houses of Congress for its review.

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Office of Civil Defense abolished. — See note to § 6-1402.

Cited in *Bethel v. Jefferson*, 589 F.2d 631 (D.C. Cir. 1978).

§ 6-1406. Limitation of liability.

Neither the District of Columbia nor any volunteer agency in the service of said District nor, except in cases of willful misconduct or gross negligence, any officer, agent, or employee of the District of Columbia or volunteer agency, or any regularly appointed volunteer worker, engaged in civil defense activities, while complying with or attempting to comply with any provision of this chapter or of any rule, regulation, or order issued pursuant to this chapter, shall be liable to any person, whether or not such person is engaged in civil defense, for death, injury, or property damage resulting therefrom. The provisions of this section shall not affect the right of any person to receive benefits to which he would otherwise be entitled under any workmen's compensation law, or under any pension, retirement, or disability law, nor the right of any such person to receive any benefits or compensation under any other act of Congress. (Aug. 11, 1950, 64 Stat. 440, ch. 686, § 4; 1973 Ed., § 6-1204.)

§ 6-1407. Appropriations authorized.

Appropriations for carrying out the purposes of this chapter are hereby authorized. (Aug. 11, 1950, 64 Stat. 440, ch. 686, § 5; 1973 Ed., § 6-1205.)

§ 6-1408. Annual report.

The Office of Emergency Preparedness, through the Mayor of the District of Columbia, shall submit to the Senate and House of Representatives on the 1st day of each regular session of the Congress a report of its activities and expenditures under this chapter. (Aug. 11, 1950, 64 Stat. 440, ch. 686, § 6; 1973 Ed., § 6-1206.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of

Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the

District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to

§ 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Office of Civil Defense abolished. — See note to § 6-1402.

§ 6-1409. Interstate civil defense compacts.

(a) The Mayor of the District of Columbia is authorized to enter into and execute on behalf of the District of Columbia interstate civil defense compacts with the states, substantially in the form set forth in this subsection. The form of compact set forth in this subsection may include, in lieu of the 2nd sentence of Article 3 thereof, the following: "Each party state shall extend to the civil defense forces of any other party state, while operating within its state limits under the terms and conditions of this compact, the same powers (except that of arrest unless specifically authorized by the receiving state), duties, rights, privileges, and immunities as are extended to the civil defense forces of such state."

FORM OF INTERSTATE COMPACT

The contracting States solemnly agree:

Article 1. The purpose of this compact is to provide mutual aid among the States in meeting any emergency or disaster from enemy attack or other cause (natural or otherwise) including sabotage and subversive acts and direct attacks by bombs, shellfire, and atomic, radiological, chemical, bacteriological means, and other weapons. The prompt, full, and effective utilization of the resources of the respective States, including such resources as may be available from the United States Government or any other source, are essential to the safety, care, and welfare of the people thereof in the event of enemy action or other emergency, and any other resources, including personnel, equipment, or supplies, shall be incorporated into a plan or plans of mutual aid to be developed among the civil-defense agencies or similar bodies of the States that are parties hereto. The Directors of Civil Defense of all party States shall constitute a committee to formulate plans and take all necessary steps for the implementation of this compact.

Article 2. It shall be the duty of each party State to formulate civil-defense plans and programs for application within such State. There shall be frequent consultation between the representatives of the States and with the United States Government and the free exchange of information and plans, including inventories of any material and equipment available for civil defense. In carrying out such civil-defense plans and programs the party States shall so far as possible provide and follow uniform standards, practices, and rules and regulations including —

(a) Insignia, arm bands, and any other distinctive articles to designate and distinguish the different civil-defense services;

(b) Blackouts and practice blackouts, air-raid drills, mobilization of civil-defense forces, and other tests and exercises;

- (c) Warnings and signals for drills or attacks and the mechanical devices to be used in connection therewith;
- (d) The effective screening or extinguishing of all lights and lighting devices and appliances;
- (e) Shutting off water mains, gas mains, electric power connections, and the suspension of all other utility services;
- (f) All materials or equipment used or to be used for civil-defense purposes in order to assure that such materials and equipment will be easily and freely interchangeable when used in or by any other party State;
- (g) The conduct of civilians and the movement and cessation of movement of pedestrians and vehicular traffic, prior, during, and subsequent to drills or attacks;
- (h) The safety of public meetings or gatherings; and
- (i) Mobile support units.

Article 3. Any party State requested to render mutual aid shall take such action as is necessary to provide and make available the resources covered by this compact in accordance with the terms hereof: provided, that it is understood that the State rendering aid may withhold resources to the extent necessary to provide reasonable protection for such State. Each party State shall extend to the civil-defense forces of any other party State, while operating within its State limits under the terms and conditions of this compact, the same powers (except that of arrest unless specifically authorized by the receiving State), duties, rights, privileges, and immunities as if they were performing their duties in the State in which normally employed or rendering services. Civil-defense forces will continue under the command and control of their regular leaders but the organizational units will come under the operational control of the civil-defense authorities of the State receiving assistance.

Article 4. Whenever any person holds a license, certificate, or other permit issued by any State evidencing the meeting of qualifications for professional, mechanical, or other skills, such person may render aid involving such skill in any party State to meet an emergency or disaster and such State shall give due recognition to such license, certificate, or other permit as if issued in the State in which aid is rendered.

Article 5. No party State or its officers or employees rendering aid in another State pursuant to this compact shall be liable on account of any act or omission in good faith on the part of such forces while so engaged, or on account of the maintenance or use of any equipment or supplies in connection therewith.

Article 6. Inasmuch as it is probable that the pattern and detail of the machinery for mutual aid among two or more States may differ from that appropriate among other States party hereto, this instrument contains elements of a broad base common to all States, and nothing herein contained shall preclude any State from entering into supplementary agreements with another State or States. Such supplementary agreements may comprehend, but shall not be limited to, provisions for evacuation and reception of injured and other persons, and the exchange of medical, fire, police, public utility, recon-

naissance, welfare, transportation, and communications personnel, equipment, and supplies.

Article 7. Each party State shall provide for the payment of compensation and death benefits to injured members of the civil-defense forces of that State and the representatives of deceased members of such forces in case such members sustain injuries or are killed while rendering aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within such State.

Article 8. Any party State rendering aid in another State pursuant to this compact shall be reimbursed by the party State receiving such aid for any loss or damage to, or expense incurred in the operation of, any equipment answering a request for aid and for the cost incurred in connection with such requests; provided, that any aiding party State may assume in whole or in part such loss, damage, expense, or other cost, or may loan such equipment or donate such services to the receiving party State without charge or cost; and provided further, that any two or more party States may enter into supplementary agreements establishing a different allocation of costs as among those States. The United States Government may relieve the party State receiving aid from any liability and reimburse the party State supplying civil-defense forces for the compensation paid to and the transportation, subsistence, and maintenance expenses of such forces during the time of the rendition of such aid or assistance outside the State and may also pay fair and reasonable compensation for the use or utilization of the supplies, materials, equipment, or facilities so utilized or consumed.

Article 9. Plans for the orderly evacuation and reception of the civilian population as the result of an emergency or disaster shall be worked out from time to time between representatives of the party States and the various local civil-defense areas thereof. Such plans shall include the manner of transporting such evacuees, the number of evacuees to be received in different areas, the manner in which food, clothing, housing, and medical care will be provided, the registration of the evacuees, the providing of facilities for the notification of relatives or friends, and the forwarding of such evacuees to other areas or the bringing in of additional materials, supplies, and all other relevant factors. Such plans shall provide that the party State receiving evacuees shall be reimbursed generally for the out-of-pocket expenses incurred in receiving and caring for such evacuees, for expenditures for transportation, food, clothing, medicines, and medical care and like items. Such expenditures shall be reimbursed by the party State of which the evacuees are residents, or by the United States Government, under plans approved by it. After the termination of the emergency or disaster the party State of which the evacuees are resident shall assume the responsibility for the ultimate support or repatriation of such evacuees.

Article 10. This compact shall be available to any State, territory, or possession of the United States, and the District of Columbia. The term "State" may also include any neighboring foreign country or province or state thereof.

Article 11. The committee established pursuant to Article 1 of this compact may request the Civil Defense Agency of the United States Government to act

as an informational and coordinating body under this compact, and representatives of such agency of the United States Government may attend meetings of such committee.

Article 12. This compact shall become operative immediately upon its ratification by any State as between it and any other State or States so ratifying and shall be subject to approval by Congress unless prior Congressional approval has been given. Duly authenticated copies of this compact and of such supplementary agreements as may be entered into shall, at the time of their approval, be deposited with each of the party States and with the Civil Defense Agency and other appropriate agencies of the United States Government.

Article 13. This compact shall continue in force and remain binding on each party State until the legislature or the Governor of such party State takes action to withdraw therefrom. Such action shall not be effective until 30 days after notice thereof has been sent by the Governor of the party State desiring to withdraw to the Governors of all other party States.

Article 14. This compact shall be construed to effectuate the purposes stated in Article 1 hereof. If any provision of this compact is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of this compact and the applicability thereof to other persons and circumstances shall not be affected thereby.

(b) Notwithstanding the provisions of the Federal Civil Defense Act of 1950 (50 U.S.C. App., § 2251 et seq.), the consent of Congress is hereby granted to each compact entered into by the District of Columbia with any state pursuant to the provisions of this section.

(c) Whenever any such compact becomes operative by ratification of the parties thereto, such compact shall have the force and effect of law.

(d) As used in this section the word "state" includes the territories and possessions of the United States and the District of Columbia and with respect to the District of Columbia the word "Governor" means the Mayor of the District of Columbia. (Apr. 22, 1954, 68 Stat. 62, ch. 172, §§ 1-4; 1973 Ed., § 6-1207.)

Change in government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

CHAPTER 15. PUBLIC EMERGENCIES.

Subchapter I. General Provisions.

- Sec.
 6-1501. Definitions.
 6-1502. Establishment of program of public emergency preparedness; publication.
 6-1503. Transmittal of plan or program to Council.
 6-1504. Issuance of emergency executive order; contents; actions of Mayor after issuance.
 6-1505. Regulations; recommendation of legislation.
 6-1506. Duration of emergency executive order; extension; publication of or-

Sec.

der; regional programs and agreements.

- 6-1507. Violation of emergency executive order.
 6-1508. Applicability of Administrative Procedure Act to emergency executive order.

Subchapter II. Nuclear Weapons Freeze.

- 6-1511. Declaration of policy.
 6-1512. Establishment of Advisory Board.
 6-1513. Duties of Advisory Board.
 6-1514. Proposal for immediate negotiation.

Subchapter I. General Provisions.

§ 6-1501. Definitions.

As used in this chapter the term:

(1) "Emergency operations plan" means the District of Columbia's state plan for public emergency preparedness and prevention prepared pursuant to § 201 of the Disaster Relief Act of 1974 (42 U.S.C. § 5121) and § 6-1502.

(2) "Mayor" means the Mayor of the District of Columbia or his or her designated agent.

(3) "Public emergency" means any disaster, catastrophe, or emergency situation where the health, safety, or welfare of persons in the District of Columbia is threatened by reason of the actual or imminent consequences within the District of Columbia of:

- (A) Enemy attack, sabotage or other hostile action;
- (B) Severe and unanticipated resource shortage;
- (C) Fire;
- (D) Flood, earthquake, or other serious act of nature;
- (E) Serious civil disorder;
- (F) Any serious industrial, nuclear, or transportation accident;
- (G) Explosion, conflagration, power failure; or

(H) Injurious environmental contamination which threatens or causes damage to life, health, or property.

(4) "Resource" means, but is not limited to, natural gas, heating fuel, automotive fuel, electricity, water, and food. (Mar. 5, 1981, D.C. Law 3-149, § 2, 27 DCR 4886.)

Legislative history of Law 3-149. — Law 3-149, the "District of Columbia Public Emergency Act of 1980," was introduced in Council and assigned Bill No. 3-198, which was referred to the Committee on Government Operations. The Bill was adopted on first and second read-

ings on September 30, 1980 and October 14, 1980, respectively. Signed by the Mayor on October 29, 1980, it was assigned Act No. 3-274 and transmitted to both Houses of Congress for its review.

§ 6-1502. Establishment of program of public emergency preparedness; publication.

(a) The Mayor may establish a program of public emergency preparedness that utilizes the services of all appropriate agencies (including the Office of Emergency Preparedness) and the program shall include, but not be limited to:

(1) Development of an emergency operations plan which would:

(A) Set forth a comprehensive and detailed District of Columbia state program for preparation against, and assistance following, emergencies and major disasters, including provisions for assistance to individuals, businesses, and affected designated subdivisions of the District of Columbia; and

(B) Include provisions for: Appointment and training of appropriate staffs; formulation of necessary regulations and procedures; and conduct of required exercises;

(2) Post public emergency evaluations;

(3) Periodic review of programs; and

(4) Coordination of federal and state preparedness programs.

(b) The Mayor shall publish in 2 consecutive editions of the District of Columbia Register, for notice and comment, any program or plan for public emergency preparedness prepared pursuant to this chapter. The publication shall, at a minimum, state the subject matter of the program or plan and the specific manner in which a complete copy can be obtained or reviewed and commented upon prior to the transmittal of the plan or program to the Council of the District of Columbia. (Mar. 5, 1981, D.C. Law 3-149, § 3, 27 DCR 4886.)

Section references. — This section is referred to in § 6-1501.

Legislative history of Law 3-149. — See note to § 6-1501.

§ 6-1503. Transmittal of plan or program to Council.

(a) The Mayor shall transmit to the Council of the District of Columbia complete copies of any existing plan or program prepared pursuant to § 201 of the Disaster Relief Act of 1974 (42 U.S.C. § 5121) within 30 calendar days of March 5, 1981. The plan or program shall be valid only if the Council of the District of Columbia does not adopt, within 30 days (excluding Saturdays, Sundays, holidays and days on which the Council of the District of Columbia is in recess according to its rules) after the receipt of the plan or program from the Mayor, a resolution disapproving the plan or program.

(b) The Mayor shall transmit to the Council of the District of Columbia complete copies of any plan or program prepared pursuant to this section within 30 calendar days of the completion of the plan or program. The plan or program shall be valid only if the Council of the District of Columbia does not adopt, within 30 days (excluding Saturdays, Sundays and holidays and days on which the Council of the District of Columbia is in recess according to its rules) after receipt of the plan or program from the Mayor, a resolution disapproving the plan or program. (Mar. 5, 1981, D.C. Law 3-149, § 4, 27 DCR 4886.)

Legislative history of Law 3-149. — See note to § 6-1501.

§ 6-1504. Issuance of emergency executive order; contents; actions of Mayor after issuance.

(a) Upon reasonable apprehension of the existence of a public emergency and the determination by the Mayor that the issuance of an order is necessary for the immediate preservation of the public peace, health, safety, or welfare, and as a prerequisite to requesting emergency or major disaster assistance in accordance with the Disaster Relief Act of 1974 (42 U.S.C. § 5121) the Mayor may issue an emergency executive order which shall state:

- (1) The existence, nature, extent, and severity of the public emergency;
- (2) The measures necessary to relieve the public emergency;
- (3) The specific requirements of the order and the persons upon whom the order is binding; and
- (4) The duration of the order.

(b) Upon the issuance of an emergency executive order the Mayor may:

(1) Expend such funds appropriated to the District of Columbia government sufficient to carry out public emergency service missions and responsibilities;

(2) Implement those provisions of the District of Columbia emergency operations plan as issued by the Mayor, without regard to established operating procedures relating to the performance of public works, entering into contracts, incurring obligations, employment of temporary workers, rental of equipment, purchase of supplies and materials, and expenditure of public funds: Provided, that this paragraph shall apply only to employees of the District of Columbia government;

(3) Prepare for, order, and supervise the implementation of measures designed to protect persons and property in the District of Columbia. Such measures may include the evacuation of persons in the District of Columbia to such emergency shelters within the District of Columbia as the Mayor may designate, or such shelters outside the District of Columbia as the Mayor may designate with the approval of the Governor of the state to which District of Columbia citizens are to be evacuated, and provision for the reception, sheltering, maintenance, and care of such evacuees. Evacuation of any personnel or activity of the federal government shall take place only with the consent of the President of the United States or the President's designee: Provided, that upon agreement between the federal and District of Columbia governments, any prearranged evacuation plan shall constitute such consent;

(4) Require the shutting off, disconnection, or suspension of service from, or by, gas mains, electric power lines, or other public utilities;

(5) Destroy or cause to be destroyed any property, real or personal, in the District of Columbia, found to be contaminated by any matter or substance which renders it deleterious to life or health, and by reason of such contamination is of immediate or imminent danger to persons or property; to cause the removal from the District of Columbia or from place to place within the District of Columbia of any contaminated property; and to prohibit persons from contacting or approaching such property so as to endanger their lives or health;

(6) Issue orders or regulations to control, restrict, allocate, or regulate the use, sale, production and distribution of food, fuel, clothing, and other

commodities, materials, goods, services, and resources as required by the emergency operations plan or by any federal emergency plan;

(7) Direct any person or group of persons, in the District of Columbia, to reduce or otherwise alter the hours during which they conduct business or similar activity at premises established and maintained for a business and to direct any person or group, or class of persons, within the District of Columbia, to remain off the public streets in the event that any public emergency requires that the Mayor institute a curfew;

(8) Establish such public emergency services units as he or she may deem appropriate;

(9) Expand existing departmental and agency units within the District of Columbia government concerned with public emergency services;

(10) Exercise operational direction over all District of Columbia government departments and agencies during the period when an emergency executive order may be in effect;

(11) Procure supplies and equipment, institute training programs and public information programs and take all other preparatory steps, including the partial or full mobilization of public emergency services units in advance of actual disaster, to insure the furnishing of adequately trained and equipped personnel during a public emergency. Such programs shall be integrated and coordinated with the emergency services plans and programs of the federal government and of the neighboring states and political subdivisions thereof;

(12) Request predisaster assistance or the declaration of a major disaster from the federal government, certify the need for federal disaster assistance and commit the use of a certain amount of District of Columbia government funds to alleviate the damage, loss, hardship, and suffering resulting from the disaster; or

(13) Prevent or reduce harmful consequences of disaster. (Mar. 5, 1981, D.C. Law 3-149, § 5, 27 DCR 4886.)

Temporary addition of sections. — Sections 2-4 of D.C. Law 8-51 added these sections to read as follows:

"Sec. 2. Definitions.

For the purposes of this act, the term:

(1) "Normal average retail price" means:

(A) In the case of a service, not more than 10% more than the price at which the person sold similar services during the 90-day period that immediately preceded an emergency that resulted from a natural disaster, if an emergency is declared pursuant to section 3(b); or

(B) In the case of merchandise, the price equal to the wholesale cost plus a retail mark-up that is the same percentage over wholesale cost as the retail markup at which the person sold similar merchandise during the 90-day period that immediately preceded an emergency that resulted from a natural disaster, if an emergency has been declared pursuant to section 3(b).

(2) "Natural disaster" means the actual or

imminent consequence of any disaster, catastrophe, or emergency, including a flood, earthquake, or storm, other serious acts of nature or fire, other than a fire caused by human error or arson, which threatens the health, safety, or welfare of persons or causes damage to property in the District of Columbia.

(3) "Person" means a corporation, firm, agency, company, association, organization, partnership, society, joint stock company, or an individual.

Sec. 3. Overcharging.

(a) It shall be unlawful for any person to charge more than the normal average retail price for any merchandise or service sold during an emergency that resulted from a natural disaster, if an emergency has been declared pursuant to subsection (b) of this section.

(b)(1) Within 48 hours of a natural disaster, the Mayor may declare, for not more than 30 calendar days, a state of emergency for the purposes of this act. The Mayor shall prepare an emergency declaration that shall include a

description of the existence, nature, extent, and duration of the emergency.

(2) Upon the declaration of an emergency or as soon as practicable given the nature of the emergency, the Mayor shall publish a copy of the emergency declaration in the District of Columbia Register and in 2 daily newspapers of general circulation.

(c) In determining whether to charge a violation of this act, the Mayor may require an affidavit that states the price at which a suspected violator sold similar services or merchandise, including, if applicable, the wholesale cost and the retail mark-up, during the 90-day period that immediately preceded an emergency that resulted from a natural disaster, if an emergency has been declared pursuant to subsection (b) if this section.

(d) The Mayor, in determining whether to charge a violation of this act, and the hearing examiner, that presides over the adjudication of a charge brought under this act, shall take into consideration all evidence of mitigating circumstances, including the existence of significantly increased costs or overhead incurred by a suspected violator in providing services or merchandise during an emergency that resulted from a natural disaster, if an emergency has been declared pursuant to subsection (b) of this section.

Sec. 4. Penalties.

(a) A person who violates section 3(a) shall be subject to a fine of not more than \$1,000. The Mayor may revoke, suspend, or limit the license, permit, or certificate of occupancy of a person who violates section 3(a).

(b) A violation of section 3(a) shall be a civil infraction for the purposes of Chapter 27 of Title 6. Civil fines, penalties, and fees may be imposed as sanctions for any infraction, pursuant to Chapter 27 of Title 6. Adjudication of any infraction shall be pursuant to Chapter 27 of Title 6."

Section 5(b) of D.C. Law 8-51 provided that the act shall expire on the 225th day of its having taken effect.

Legislative history of Law 3-149. — See note to § 6-1501.

Legislative history of Law 8-51. — Law 8-51, the "Natural Disaster Consumer Protection Temporary Act of 1989," was introduced in Council and assigned Bill No. 8-330. The Bill was adopted on first and second readings on June 27, 1989 and July 11, 1989, respectively. Signed by the Mayor on August 1, 1989, it was assigned Act No. 8-85 and transmitted to both Houses of Congress for its review. Law 8-51 became effective on October 19, 1989.

§ 6-1505. Regulations; recommendation of legislation.

In addition to disaster prevention measures included in District of Columbia government and interjurisdictional public emergency plans, to prevent or manage the harmful consequences of a disaster, and consistent with the provisions of other law, the Mayor shall, when appropriate, issue regulations or recommend legislation to the Council of the District of Columbia relating to flood plain management, stream encroachment and flow regulation, weather modification, fire prevention and control, air quality, public works, land use, land use planning, and construction standards. (Mar. 5, 1981, D.C. Law 3-149, § 6, 27 DCR 4886.)

Legislative history of Law 3-149. — See note to § 6-1501.

§ 6-1506. Duration of emergency executive order; extension; publication of order; regional programs and agreements.

(a) Any emergency executive order issued by the Mayor shall be effective for a period of no more than 15 calendar days from the day it is signed by the Mayor, but may be rescinded in whole or in part by the Mayor within that period should the Mayor determine that the public emergency no longer exists, or no longer warrants the part rescinded.

(b) An emergency executive order may be extended for up to an additional 15-day period, only upon request by the Mayor for, and the adoption of, an emergency act by the Council of the District of Columbia.

(c) Should extenuating circumstances, such as death, destruction or other perilous conditions prohibit the convening of at least two-thirds of the members of the Council of the District of Columbia for consideration of emergency legislation, the Mayor shall make a reasonable attempt to consult with those members of the Council of the District of Columbia not affected by death, destruction, or other perilous conditions, after which the Mayor may extend the emergency executive order for up to 15 days.

(d) Upon the issuance of any emergency executive order, as soon as practicable given the condition of the emergency, the order shall be published in the District of Columbia Register, in 2 daily newspapers of general circulation in the District of Columbia, and shall be posted in such public places in the District of Columbia as the Mayor determines by regulation.

(e) The Mayor may adopt and implement such rules and regulations as the Mayor finds necessary to carry out the purposes of this chapter, pursuant to the District of Columbia Administrative Procedure Act (D.C. Code, § 1-1501 et seq.).

(f) The Mayor may join or enter into, on behalf of the District of Columbia government, regional programs, and agreements with the federal government, neighboring states, and political subdivisions thereof, for the coordination of disaster preparedness programs. (Mar. 5, 1981, D.C. Law 3-149, § 7, 27 DCR 4886.)

Legislative history of Law 3-149. — See note to § 6-1501.

§ 6-1507. Violation of emergency executive order.

An emergency executive order issued by the Mayor may provide for a fine of not more than \$1,000 for each violation. The Corporation Counsel of the District of Columbia or any Assistant Corporation Counsel may bring an action in the name of the District of Columbia against anyone who has violated the provisions of an emergency executive order issued pursuant to this chapter. (Mar. 5, 1981, D.C. Law 3-149, § 8, 27 DCR 4886.)

Legislative history of Law 3-149. — See note to § 6-1501.

§ 6-1508. Applicability of Administrative Procedure Act to emergency executive order.

No action taken pursuant to an emergency executive order issued by the Mayor pursuant to this chapter shall be subject to § 1-1509, until after the expiration date of the emergency executive order. (Mar. 5, 1981, D.C. Law 3-149, § 9, 27 DCR 4886.)

Legislative history of Law 3-149. — See note to § 6-1501.

Repeal of D.C. Act 8-5. — Section 7 of D.C. Law 8-13, effective June 16, 1989, provided that the Short Term Curfew Emergency Act of

1989, effective March 15, 1989, D.C. Act 8-5, is repealed.

Section 8(b) of D.C. Law 8-13 provided that the act shall expire on the 225th day of its having taken effect.

Subchapter II. Nuclear Weapons Freeze.

§ 6-1511. Declaration of policy.

In the interest of preventing nuclear war, reversing the economic impact of weapons spending, and safeguarding District of Columbia residents, and recognizing that civil defense cannot provide protection from nuclear destruction, it is by the electors declared the public policy of the District of Columbia to support:

(1) A mutual United States-Soviet Union nuclear weapons freeze as a first step toward arms reduction;

(2) Redirection of resources to job creation and human needs; and

(3) Avoidance of nuclear war, not futile preparation to withstand nuclear attack. (Mar. 17, 1983, D.C. Law 4-210, § 2, 30 DCR 1088.)

Section references. — This section is referred to in §§ 6-1512 and 6-1513.

Legislative history of Law 4-210. — Law 4-210, the "Nuclear Weapons Freeze Act of 1982," was submitted to the electors of the District of Columbia on November 2, 1982, as Initiative No. 10. The results of the voting, certified by the Board of Elections and Ethics on November 10, 1982, were 80,766 for the Initiative and 34,926 against the Initiative. It was transmitted to Congress on February 1,

1983, published in the D.C. Register on March 11, 1983, and became law on March 17, 1983.

Nuclear Test Ban Support. — Pursuant to Resolution 6-656, the "Nuclear Test Ban Support Resolution of 1986," effective May 13, 1986, the Council expressed support for a mutual and verifiable ban of nuclear testing as a first step towards freezing and reversing the arms race between the United States and the Soviet Union.

§ 6-1512. Establishment of Advisory Board.

The Mayor, with the advice and consent of the Council, shall appoint an uncompensated Nuclear Weapons Freeze Advisory Board of not less than 3 and not more than 7 residents of the District of Columbia. Board members shall be appointed to 2 year terms. The Board shall continue in existence until the Mayor determines that the objectives of the policy declared in § 6-1511 have been fully attained. (Mar. 17, 1983, D.C. Law 4-210, § 3, 30 DCR 1088.)

Legislative history of Law 4-210. — See note to § 6-1511.

§ 6-1513. Duties of Advisory Board.

The Board shall:

(1) Identify District of Columbia agency activities pertaining to nuclear war and prepare a report to the Mayor concerning actions that should be taken by such District of Columbia agencies to implement the policy declared in § 6-1511; and

(2) Prepare information concerning:

(A) The nuclear weapons build-up;

(B) The foreseeable effects of a nuclear attack on the District of Columbia;

(C) The feasibility of civil defense against nuclear attack; and

(D) The implications of a policy supporting:

(i) A mutual United States-Soviet Union nuclear weapons freeze as a first step toward arms reduction;

(ii) Redirection of resources to job creation and human needs; and

(iii) Avoidance of nuclear war, not preparation to withstand nuclear attack. (Mar. 17, 1983, D.C. Law 4-210, § 4, 30 DCR 1088.)

Legislative history of Law 4-210. — See note to § 6-1511.

§ 6-1514. Proposal for immediate negotiation.

Within 30 days of March 17, 1983, the Mayor shall propose to Congress, the Secretary of Defense, the Secretary of State, and the President the immediate negotiation with the Soviet Union of a permanent, mutual freeze on the testing, production, and further deployment of all nuclear weapons and their delivery systems. (Mar. 17, 1983, D.C. Law 4-210, § 5, 30 DCR 1088.)

Initiative 37, D.C. Law 10-99. — D.C. Law 10-99 was enacted by the electors of the District of Columbia in Initiative Measure 37.

Section 1 of D.C. Law 10-99 requires the Mayor to notify the District's Congressional Delegate, in writing, that a majority of District voters request that the Delegate propose a Constitutional amendment directing the U.S. government to: 1) abolish all nuclear warheads by the year 2000; 2) pursue a good faith effort to eliminate war, armed conflict, and military operations; 3) actively promote international peace and nuclear disarmament; and 4) convert weapons industries into constructive, ecologically beneficial peacetime industries and to redirect those resources to meet human needs, including housing, health care, agriculture, education, and environment.

Section 2 of D.C. Law 10-99 provided for severability of the act.

Legislative history of Law 4-210. — See note to § 6-1511.

Legislative history of Law 10-99. — Law 10-99, the "Nuclear Disarmament and Economic Conversion Constitutional Amendment Proposal Act of 1992," was submitted to the electors of the District of Columbia on September 14, 1993, as Initiative No. 37. The results of the voting, certified by the Board of Elections and Ethics on September 27, 1993, were 41,702 for the Initiative and 32,422 against the Initiative. It was transmitted to both Houses of Congress for its review on February 25, 1994.

CHAPTER 16. REGISTER OF BLIND PERSONS.

Sec.

6-1601. Establishment of register; purpose.

6-1602. Persons required to file reports; confidentiality of register and reports; statistical abstracts.

Sec.

6-1603. Definitions.

6-1604. Limited liability of persons making reports.

§ 6-1601. Establishment of register; purpose.

That the Mayor of the District of Columbia shall establish and maintain a register of blind persons residing in the District of Columbia. Such register shall, under regulations prescribed by the Council of the District of Columbia, provide information of such nature as will or may be of assistance in the planning of improved facilities and services for blind persons and in the restoration and conservation of sight. (Aug. 3, 1968, 82 Stat. 633, Pub. L. 90-458, § 1; 1973 Ed., § 6-1401.)

Section references. — This section is referred to in § 6-1602.

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C.

Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Transfer of functions. — Organization Order No. 104 provided for the establishment, maintenance, and administration of a register of blind persons by the Department of Vocational Rehabilitation. All functions stated in such Order were transferred to the Director of the Department of Human Resources by Commissioner's Order No. 69-96, dated March 7, 1969, as amended by Commissioner's Order No. 70-83, dated March 6, 1970. The Department of Human Resources was replaced by the Department of Human Services, by Reorganization Plan No. 2 of 1979, dated February 21, 1980.

§ 6-1602. Persons required to file reports; confidentiality of register and reports; statistical abstracts.

Each: (1) Health, educational, and social service agency or institution operating in the District of Columbia and having in its care or custody (either full or part time), or rendering service to, any blind person; (2) physician and osteopath licensed or registered by the District of Columbia who has in his professional care for diagnosis or treatment such a person; and (3) optometrist licensed by the District of Columbia who, in the course of his practice of optometry, ascertains that a person is blind, shall report in writing to the Mayor the name, age, and residence of such person and such additional information as the Council may, by regulation, require for incorporation in the register referred to in § 6-1601. Such register and reports shall not be open to public inspection. The Mayor may make available in the form of statistical abstracts or digests information contained in such register and reports if the identity of persons referred to in such register or reports is not disclosed in such abstracts or digests. (Aug. 3, 1968, 82 Stat. 633, Pub. L. 90-458, § 2; 1973 Ed., § 6-1402.)

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia

Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 6-1603. Definitions.

For the purpose of this chapter:

(1) The term "blind person" means, and the term "blind" refers to, a person who:

- (A) Is totally blind;
- (B) Has impaired vision of not more than 20/200 visual acuity in the better eye and for whom vision cannot be improved to better than 20/200; or
- (C) Who has loss of vision due wholly or in part to impairment of field vision or to other factors which affect the usefulness of vision to a like degree.

(2) The term "Mayor" means the Mayor of the District of Columbia or his designated agent.

(3) The term "Council" means the Council of the District of Columbia. (Aug. 3, 1968, 82 Stat. 633, Pub. L. 90-458, § 3; 1973 Ed., § 6-1403.)

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia

Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 6-1604. Limited liability of persons making reports.

Any person who in good faith makes a report pursuant to this chapter or pursuant to any regulation promulgated under the authority of this chapter, shall not, by reason thereof, be personally liable in damages. (Aug. 3, 1968, 82 Stat. 633, Pub. L. 90-458, § 4; 1973 Ed., § 6-1404.)

CHAPTER 17. RIGHTS OF BLIND AND PHYSICALLY DISABLED PERSONS.

Sec.

6-1701. Equal access to public places.

6-1702. Equal access to public accommodations and conveyances.

6-1703. [Repealed].

6-1704. Safety standards for drivers of motor vehicles.

Sec.

6-1705. Discrimination in employment prohibited.

6-1706. Equal access to housing.

6-1707. Penalties.

6-1708. White Cane Safety Day.

6-1709. Definitions.

§ 6-1701. Equal access to public places.

The blind and the otherwise physically disabled have the same right as the able-bodied to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities, and other public places in the District of Columbia. (Oct. 21, 1972, 86 Stat. 970, Pub. L. 92-515, § 1; 1973 Ed., § 6-1501.)

Cross references. — As to definitions applicable in this chapter, see § 6-1709.

Section references. — This section is referred to in §§ 6-1704 and 6-1707.

§ 6-1702. Equal access to public accommodations and conveyances.

(a) The blind and the otherwise physically disabled are entitled to full and equal accommodations, advantages, facilities, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motor buses, streetcars, boats, or any other public conveyances or modes of transportation in the District of Columbia, hotels, lodging places, places of public accommodation, amusement, or resort, and other places to which the general public is invited in the District of Columbia, subject only to the conditions and limitations established by law or in accordance with law applicable alike to all persons.

(b) Every blind person or deaf person shall have the right to be accompanied by a dog guide, in any of the places, accommodations, or conveyances listed in subsection (a) of this section, without being denied access because of the dog guide and required to pay an extra charge for the dog guide; but any blind person or deaf person so accompanied shall be liable for any damage done to the premises or facilities by such dog. (Oct. 21, 1972, 86 Stat. 971, Pub. L. 92-515, § 2; 1973 Ed., § 6-1502; Mar. 5, 1981, D.C. Law 3-144, § 2(a), 27 DCR 4659.)

Cross references. — As to federal contribution to make subway and rapid rail transit system accessible to handicapped persons, see § 1-2453.

Section references. — This section is referred to in §§ 6-1704 and 6-1707.

Legislative history of Law 3-144. — Law 3-144, the "Deaf and Audio Handicapped Amendments Act of 1980," was introduced in

Council and assigned Bill No. 3-127, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on September 16, 1980 and September 30, 1980, respectively. Signed by the Mayor on October 14, 1980, it was assigned Act No. 3-265 and transmitted to both Houses of Congress for its review.

§ 6-1703. Architectural barrier-free design requirements.

Repealed. Mar. 21, 1987, D.C. Law 6-216, § 12(a)(8), 34 DCR 1072.

Legislative history of Law 6-216. — Law 6-216, the “Construction Codes Approval and Amendments Act of 1986,” was introduced in Council and assigned Bill No. 6-500, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings

on November 18, 1986 and December 16, 1986, respectively. Signed by the Mayor on February 2, 1987, it was assigned Act No. 6-279 and transmitted to both Houses of Congress for its review.

§ 6-1704. Safety standards for drivers of motor vehicles.

The driver of a vehicle in the District of Columbia approaching a blind pedestrian who is carrying a cane predominantly white or metallic in color (with or without a red tip) or a deaf pedestrian, either of whom is using a dog guide shall take all necessary precautions to avoid injury to such blind or deaf pedestrian, and any driver who fails to take such precautions shall be liable in damages for any injury caused such pedestrian. A blind pedestrian in the District of Columbia not carrying such a cane or a deaf pedestrian, either of whom is not using a dog guide in any of the places, accommodations, or conveyances listed in §§ 6-1701 and 6-1702 shall have all of the rights and privileges conferred by law on other persons, and the failure of such a blind pedestrian to carry such a cane or the failure of a blind or deaf pedestrian to use a dog guide in any such places, accommodations, or conveyances shall not be held to constitute nor be evidence of contributory negligence. (Oct. 21, 1972, 86 Stat. 971, Pub. L. 92-515, § 3; 1973 Ed., § 6-1503; Mar. 5, 1981, D.C. Law 3-144, § 2(b), 27 DCR 4659.)

Legislative history of Law 3-144. — See note to § 6-1702.

§ 6-1705. Discrimination in employment prohibited.

The blind and the otherwise physically disabled shall be employed by: (1) Every individual, partnership, firm, association, or corporation, or the receiver, trustee, or successor thereof (exclusive of the government of the United States or any agency thereof), doing business, and employing any individual for the purpose of such business, in the District of Columbia; and (2) the government of the District of Columbia, the Board of Education of the District of Columbia, the Board of Trustees of the University of the District of Columbia, the Board of Higher Education of the District of Columbia, and the Executive Officer of the District of Columbia courts, and all other employers supported in whole or in part by appropriations for the District of Columbia, on the same terms and conditions as the able-bodied, unless it is shown that the particular disability prevents the performance of the work involved. (Oct. 21, 1972, 86 Stat. 971, Pub. L. 92-515, § 4; 1973 Ed., § 6-1504.)

Section references. — This section is referred to in § 6-1707.

Cited in *Smith v. Police & Firemen's Retirement*

& Relief Bd., App. D.C., 460 A.2d 997 (1983).

§ 6-1706. Equal access to housing.

(a) Blind persons and other physically disabled persons shall be entitled to full and equal access, as other members of the general public, to all housing accommodations offered for rent, lease, or compensation in the District of Columbia, subject to the conditions and limitations established by law or in accordance with law and applicable alike to all persons.

(b) Every blind or deaf person who has a dog guide, or who obtains a dog guide, shall be entitled to full and equal access to all housing accommodations referred to in this section, without being denied access because of the dog guide and required to pay an extra charge for the dog guide; but such blind or deaf person shall be liable for any damage done to the premises by such dog.

(c) Nothing in this section shall require any person renting, leasing, or providing real property for compensation in the District of Columbia to modify his property in any way or to provide a higher degree of care for a blind person or otherwise physically disabled person than for a person who is not physically disabled. (Oct. 21, 1972, 86 Stat. 972, Pub. L. 92-515, § 5; 1973 Ed., § 6-1505; Mar. 5, 1981, D.C. Law 3-144, § 2(c), 27 DCR 4659.)

Section references. — This section is referred to in § 6-1707.

Legislative history of Law 3-144. — See note to § 6-1702.

§ 6-1707. Penalties.

Any person or the agent of any person in the District of Columbia who denies or interferes with admittance to or enjoyment of any of the places, accommodations, or conveyances listed in §§ 6-1701 and 6-1702 or otherwise interferes with the rights of a blind or otherwise disabled person under § 6-1701, 6-1702, 6-1705, or 6-1706 shall be imprisoned for not longer than 90 days, or fined not more than \$300, or both. (Oct. 21, 1972, 86 Stat. 972, Pub. L. 92-515, § 6; 1973 Ed., § 6-1506.)

§ 6-1708. White Cane Safety Day.

Each year, the Mayor of the District of Columbia shall take suitable public notice of October 15th as White Cane Safety Day. He shall issue a proclamation commenting upon the significance of the white cane, and calling upon the citizens of the District of Columbia to observe the provisions of this chapter, to be aware of the presence of disabled persons in the community, to keep safe and functional for the disabled the streets, highways, sidewalks, walkways, public buildings, public facilities, other public places, places of public accommodation, amusement, and resort, and other places to which the public is invited, and to offer assistance to disabled persons upon appropriate occasions. (Oct. 21, 1972, 86 Stat. 972; Pub. L. 92-515, § 7; 1973 Ed., § 6-1507.)

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia

Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of govern-

ment were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly,

and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 6-1709. Definitions.

For the purposes of this chapter:

(1) The term "blind person" means, and the term "blind" refers to, a person who is totally blind, has impaired vision of not more than 20/200 visual acuity in the better eye and for whom vision cannot be improved to better than 20/200, or who has loss of vision due wholly or in part to impairment of field vision or to other factors which affect the usefulness of vision to a like degree.

(2) The term "deaf person" means a person who is totally deaf or a person with hearing impairment that severely interferes with his or her ability to hear environmental noises.

(3) The term "guide dog" means a dog that is specially trained to assist a blind or deaf person and one which a blind or deaf person relies on for assistance.

(4) The term "otherwise physically disabled" refers to an individual who has a medically determinable physical impairment (other than blindness) which interferes with his ability to move about, to assist himself, or to engage in an occupation. (Oct. 21, 1972, 86 Stat. 972, Pub. L. 92-515, § 8; 1973 Ed., § 6-1508; Mar. 5, 1981, D.C. Law 3-144, § 2 (d), 27 DCR 4659.)

Legislative history of Law 3-144. — See note to § 6-1702.

CHAPTER 18. INTERSTATE COMPACT ON MENTAL HEALTH.

Sec.

- 6-1801. Authority to enter into Compact.
- 6-1802. Compact administrator authorized.
- 6-1803. Supplementary agreements.
- 6-1804. Discharge of financial obligations.

Sec.

- 6-1805. Consultation concerning proposed transferee.
- 6-1806. Distribution of copies of chapter.

§ 6-1801. Authority to enter into Compact.

The Mayor of the District of Columbia is hereby authorized to enter into and execute on behalf of the District of Columbia an agreement with any state or states legally joining therein in the form substantially as set forth in this section.

THE INTERSTATE COMPACT ON MENTAL HEALTH

ARTICLE I—PURPOSE AND FINDINGS

The party states find that the proper and expeditious treatment of the mentally ill and mentally deficient can be facilitated by cooperative action, to the benefit of the patients, their families, and society as a whole. Further, the party states find that the necessity of and desirability for furnishing such care and treatment bears no primary relation to the residence or citizenship of the patient but that, on the contrary, the controlling factors of community safety and humanitarianism require that facilities and services be made available for all who are in need of them. Consequently, it is the purpose of this compact and of the party states to provide the necessary legal basis for the institutionalization or other appropriate care and treatment of the mentally ill and mentally deficient under a system that recognizes the paramount importance of patient welfare and to establish the responsibilities of the party states in terms of such welfare.

ARTICLE II—DEFINITIONS

As used in this compact:

(a) "Sending state" shall mean a party state from which a patient is transported pursuant to the provisions of the compact or from which it is contemplated that a patient may be so sent.

(b) "Receiving state" shall mean a party state to which a patient is transported pursuant to the provisions of the compact or to which it is contemplated that a patient may be so sent.

(c) "Institution" shall mean any hospital or other facility maintained by a party state or political subdivision thereof for the care and treatment of mental illness or mental deficiency, and shall include Saint Elizabeth's Hospital in the District of Columbia.

(d) "Patient" shall mean any person subject to or eligible as determined by the laws of the sending state, for institutionalization or other care, treatment, or supervision pursuant to the provisions of this compact.

(e) "After-care" shall mean care, treatment and services provided a patient, as defined herein, on convalescent status or conditional release.

(f) "Mental illness" shall mean mental disease to such extent that a person so afflicted requires care and treatment for his own welfare, or the welfare of others, or of the community.

(g) "Mental deficiency" shall mean mental deficiency as defined by appropriate clinical authorities to such extent that a person so afflicted is incapable of managing himself and his affairs, but shall not include mental illness as defined herein.

(h) "State" shall mean any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

ARTICLE III—ELIGIBILITY AND PLACEMENT OF PATIENTS

(a) Whenever a person physically present in any party state shall be in need of institutionalization by reason of mental illness or mental deficiency, he shall be eligible for care and treatment in an institution in that state irrespective of his residence, settlement or citizenship qualifications.

(b) The provisions of paragraph (a) of this article to the contrary notwithstanding, any patient may be transferred to an institution in another state whenever there are factors based upon clinical determinations indicating that the care and treatment of said patient would be facilitated or improved thereby. Any such institutionalization may be for the entire period of care and treatment or for any portion or portions thereof. The factors referred to in this paragraph shall include the patient's full record with due regard for the location of the patient's family, character of the illness and probable duration thereof, and such other factors as shall be considered appropriate.

(c) No state shall be obliged to receive any patient pursuant to the provisions of paragraph (b) of this article unless the sending state has given advance notice of its intention to send the patient; furnished all available medical and other pertinent records concerning the patient; given the qualified medical or other appropriate clinical authorities of the receiving state an opportunity to examine the patient if said authorities so wish; and unless the receiving state shall agree to accept the patient.

(d) In the event that the laws of the receiving state establish a system of priorities for the admission of patients, an interstate patient under this compact shall receive the same priority as a local patient and shall be taken in the same order and at the same time that he would be taken if he were a local patient.

(e) Pursuant to this compact, the determination as to the suitable place of institutionalization for a patient may be reviewed at any time and such further transfer of the patient may be made as seems likely to be in the best interest of the patient.

ARTICLE IV—AFTER-CARE OR SUPERVISION IN THE RECEIVING STATE

(a) Whenever, pursuant to the laws of the state in which a patient is physically present, it shall be determined that the patient should receive after-care or supervision, such care or supervision may be provided in a receiving state. If the medical or other appropriate clinical authorities having

responsibility for the care and treatment of the patient in the sending state shall have reason to believe that after-care in another state would be in the best interest of the patient and would not jeopardize the public safety, they shall request the appropriate authorities in the receiving state to investigate the desirability of affording the patient such after-care in said receiving state, and such investigation shall be made with all reasonable speed. The request for investigation shall be accompanied by complete information concerning the patient's intended place of residence and the identity of the person in whose charge it is proposed to place the patient, the complete medical history of the patient, and such other documents as may be pertinent.

(b) If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state and the appropriate authorities in the receiving state find that the best interest of the patient would be served thereby, and if the public safety would not be jeopardized thereby, the patient may receive after-care or supervision in the receiving state.

(c) In supervising, treating, or caring for a patient on after-care pursuant to the terms of this article, a receiving state shall employ the same standards of visitation, examination, care, and treatment that it employs for similar local patients.

ARTICLE V—ESCAPE OF DANGEROUS OR POTENTIALLY DANGEROUS PATIENTS

Whenever a dangerous or potentially dangerous patient escapes from an institution in any party state, that state shall promptly notify all appropriate authorities within and without the jurisdiction of the escape in a manner reasonably calculated to facilitate the speedy apprehension of the escapee. Immediately upon the apprehension and identification of any such dangerous or potentially dangerous patient, he shall be detained in the state where found pending disposition in accordance with law.

ARTICLE VI—TRANSPORTING PATIENTS THROUGH PARTY STATES

The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the patient, shall be permitted to transport any patient being moved pursuant to this compact through any and all states party to this compact, without interference.

ARTICLE VII—PAYMENT OF COSTS

(a) No person shall be deemed a patient of more than one institution at any given time. Completion of transfer of any patient to an institution in a receiving state shall have the effect of making the person a patient of the institution in the receiving state.

(b) The sending state shall pay all costs of and incidental to the transportation of any patient pursuant to this compact, but any two or more party

states may, by making a specific agreement for that purpose, arrange for a different allocation of costs as among themselves.

(c) No provision of this compact shall be construed to alter or affect any internal relationships among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

(d) Nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to any provision of this compact.

(e) Nothing in this compact shall be construed to invalidate any reciprocal agreement between a party state and a non-party state relating to institutionalization, care or treatment of the mentally ill or mentally deficient, or any statutory authority pursuant to which such agreements may be made.

ARTICLE VIII—GUARDIANS

(a) Nothing in this compact shall be construed to abridge, diminish, or in any way impair the rights, duties, and responsibilities of any patient's guardian on his own behalf or in respect of any patient for which he may serve, except that where the transfer of any patient to another jurisdiction makes advisable the appointment of a supplemental or substitute guardian, any court of competent jurisdiction in the receiving state may make such supplemental or substitute appointment and the court which appointed the previous guardian shall upon being duly advised of the new appointment, and upon the satisfactory completion of such accounting and other acts as such court may by law require, relieve the previous guardian of power and responsibility to whatever extent shall be appropriate in the circumstances: Provided, however, that in the case of any patient having settlement in the sending state, the court of competent jurisdiction in the sending state shall have the sole discretion to relieve a guardian appointed by it or continue his power and responsibility, whichever it shall deem advisable. The court in the receiving state may, in its discretion, confirm or reappoint the person or persons previously serving as guardian in the sending state in lieu of making a supplemental or substitute appointment.

(b) The term "guardian" as used in paragraph (a) of this article shall include any guardian, trustee, legal committee, conservator, or other person or agency however denominated who is charged by law with power to act for or responsibility for the person or property of a patient.

ARTICLE IX—INAPPLICABILITY OF COMPACT TO PERSONS SUBJECT TO PENAL SENTENCE; POLICY AGAINST PLACEMENT OF PATIENTS IN PRISONS OR JAILS

(a) No provision of this compact except Article V shall apply to any person person institutionalized while under sentence in a penal or correctional institution or while subject to trial on a criminal charge, or whose institutionalization is due to the commission of an offense for which, in the absence of

mental illness or mental deficiency, said person would be subject to incarceration in a penal or correctional institution.

(b) To every extent possible, it shall be the policy of states party to this compact that no patient shall be placed or detained in any prison, jail or lockup, but such patient shall, with all expedition, be taken to a suitable institutional facility for mental illness or mental deficiency.

ARTICLE X—COMPACT ADMINISTRATORS

(a) Each party state shall appoint a “compact administrator” who, on behalf of his state, shall act as general coordinator of activities under the compact in his state and who shall receive copies of all reports, correspondence, and other documents relating to any patient processed under the compact by his state either in the capacity of sending or receiving state. The compact administrator or his duly designated representative shall be the official with whom other party states shall deal in any matter relating to the compact or any patient processed thereunder.

(b) The compact administrators of the respective party states shall have power to promulgate reasonable rules and regulations to carry out more effectively the terms and provisions of this compact.

ARTICLE XI—SUPPLEMENTARY AGREEMENTS

The duly constituted administrative authorities of any two or more party states may enter into supplementary agreements for the provision of any service or facility or for the maintenance of any institution on a joint or cooperative basis whenever the states concerned shall find that such agreements will improve services, facilities, or institutional care and treatment in the fields of mental illness or mental deficiency. No such supplementary agreement shall be construed so as to relieve any party state of any obligation which it otherwise would have under other provisions of this compact.

ARTICLE XII—EFFECTIVE DATE OF COMPACT

This compact shall enter into full force and effect as to any state when enacted by it into law and such state shall thereafter be a party thereto with any and all states legally joining therein.

ARTICLE XIII—WITHDRAWAL FROM COMPACT

(a) A state party to this compact may withdraw therefrom by enacting a statute repealing the same. Such withdrawal shall take effect one year after notice thereof has been communicated officially and in writing to the governors and compact administrators of all other party states. However, the withdrawal of any state shall not change the status of any patient who has been sent to said state or sent out of said state pursuant to the provisions of this compact.

(b) Withdrawal from any agreement permitted by Article XII (b) as to costs or from any supplementary agreement made pursuant to Article XI shall be in accordance with the terms of such agreement.

ARTICLE XIV—CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

(Apr. 26, 1972, 86 Stat. 126, Pub. L. 92-280, § 2; 1973 Ed., § 6-1601.)

References in text. — The reference to “Article XII(b),” in Article XIII(b), should probably be a reference to “Article VII(b).”

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Alternate local care. — Before the court may order an involuntary committee treated at public expense outside the District of Colum-

bia, on the ground that no suitable facilities are available within the District, the District is entitled to reasonable time to attempt to design a program for alternate local care. *District of Columbia v. H.J.B.*, App. D.C., 359 A.2d 285 (1976).

District obligated for nonresident's treatment costs. — The District of Columbia has an obligation to pay the costs of medical treatment of one whom the District has involuntarily civilly committed — in other words, of one whom the District has deprived of liberty — whether or not that individual is a resident, until such time as another person or jurisdiction assumes responsibility for those costs. In *re Myrick*, App. D.C., 624 A.2d 1222 (1993).

The District of Columbia may not avoid the financial burden of caring for a mentally ill committee simply because it believes the federal government is ultimately responsible for that care under federal law. In *re Myrick*, App. D.C., 624 A.2d 1222 (1993).

§ 6-1802. Compact administrator authorized.

Pursuant to this Compact, the Mayor of the District of Columbia is hereby authorized and empowered to designate an officer who shall be the Compact Administrator and who, acting jointly with like officers of party states, shall have power to promulgate rules and regulations to carry out more effectively the terms of the Compact. The Compact Administrator is hereby authorized, empowered, and directed to cooperate with all departments, agencies, and officers of and in the government of the District of Columbia in facilitating the proper administration of the Compact or of any supplementary agreement or agreements entered into by the District thereunder. (Apr. 26, 1972, 86 Stat. 130, Pub. L. 92-280, § 3; 1973 Ed., § 6-1602.)

References in text. — The “Compact,” referred to throughout the section, is set forth in § 6-1801.

Change in government. — This section

originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia

Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

Designation of Compact Administrator. — The Director, Department of Human Resources, was designated Compact Administrator for the District of Columbia by Commissioner's Order No. 72-241A, dated September 20, 1972. The Department of Human Resources was replaced by the Department of Human Services by Reorganization Plan No. 2 of 1979, dated February 21, 1980.

§ 6-1803. Supplementary agreements.

The Compact Administrator is hereby authorized and empowered to enter into supplementary agreements with appropriate officials of party states pursuant to Articles VII and XI of the Compact. In the event that such supplementary agreements shall require or contemplate the use of any institution or facility of the District of Columbia or require or contemplate the provision of any service by the District of Columbia, no such agreement shall have force or effect until approved by the head of the department or agency under whose jurisdiction said institution or facility is operated or whose department or agency will be charged with the rendering of such service. (Apr. 26, 1972, 86 Stat. 130, Pub. L. 92-280, § 4; 1973 Ed., § 6-1603.)

References in text. — The "Compact," referred to at the end of the first sentence, is set forth in § 6-1801.

§ 6-1804. Discharge of financial obligations.

The Compact Administrator, subject to the approval of the Mayor or his designated agent, may make or arrange for any payments necessary to discharge any financial obligations imposed upon the District of Columbia by the Compact or by any supplementary agreement entered into thereunder. (Apr. 26, 1972, 86 Stat. 131, Pub. L. 92-280, § 5; 1973 Ed., § 6-1604.)

References in text. — The "Compact," referred to near the end of the section, is set forth in § 6-1801.

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code,

§ 1-211), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

§ 6-1805. Consultation concerning proposed transferee.

The Compact Administrator is hereby directed to consult with the immediate family of any proposed transferee and, in the case of a proposed transferee from an institution in the District of Columbia to an institution in a party state, to take no final action without approval of the Superior Court of the

District of Columbia. (Apr. 26, 1972, 86 Stat. 131, Pub. L. 92-280, § 6; 1973 Ed., § 6-1605.)

§ 6-1806. Distribution of copies of chapter.

Duly authorized copies of this chapter shall, upon its approval, be transmitted by the Mayor or his designated agent to the Governor of each state, the Attorney General and the Administrator of General Services of the United States, and the Council of State Governments. (Apr. 26, 1972, 86 Stat. 131, Pub. L. 92-280, § 7; 1973 Ed., § 6-1606.)

Change in government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-211), abolished the District of Columbia

Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia, and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-213(a)), appropriate changes in terminology were made in this section.

CHAPTER 19. RIGHTS OF MENTALLY RETARDED CITIZENS.

Subchapter I. Statement of Purpose; Definitions.

Sec.

- 6-1901. Statement of purpose.
- 6-1902. Definitions.

Subchapter II. Determination of Need for Mental Retardation Facilities and Services in the District

- 6-1911. Determination of need for mental retardation facilities and services in the District.

Subchapter III. Admission, Commitment, Discharge, Transfer, Respite Care.

- 6-1921. Competence of individual to refuse commitment.
- 6-1922. Voluntary admission.
- 6-1923. Application by individual for out-patient nonresidential habilitation.
- 6-1924. Petition for commitment of individual 14 years of age or older filed by parent or guardian.
- 6-1925. Application by parent or guardian for nonresidential habilitation.
- 6-1926. Petition for commitment of individual under 14 years of age filed by parent or guardian.
- 6-1927. Immediate discharge from facility upon request by individual.
- 6-1928. Discharge from commitment upon request by parent or guardian.
- 6-1929. Transfer of resident from one facility to another.
- 6-1930. Discharge from residential care.
- 6-1931. Inability to pay for habilitation.
- 6-1932. Court hearing required prior to commitment.
- 6-1933. Effect of determination of incompetency to refuse commitment.
- 6-1934. Rules and regulations governing respite care.

Subchapter IV. Hearing and Review Procedures.

- 6-1941. Commencement of commitment proceedings; filing of written petition.
- 6-1942. Representation by counsel.
- 6-1943. Comprehensive evaluation report and individual habilitation plan required; contents; copies.
- 6-1944. Payment for independent comprehensive evaluation and habilitation plan.

Sec.

- 6-1945. Hearing conducted promptly.
- 6-1946. Hearings conducted in informal manner; procedural rights at hearing.
- 6-1947. Standard of proof.
- 6-1948. Hearings closed to public; request for open hearing.
- 6-1949. Disposition orders by Court.
- 6-1950. Appeal of commitment order.
- 6-1951. Periodic review of commitment order.
- 6-1952. Payment of costs and expenses.
- 6-1953. Mental retardation advocate.

Subchapter V. Rights of Mentally Retarded Persons.

- 6-1961. Habilitation and care; habilitation program.
- 6-1962. Living conditions; teaching of skills.
- 6-1963. Least restrictive conditions.
- 6-1964. Comprehensive evaluation and individual habilitation plan.
- 6-1965. Visitors; mail; access to telephones; religious practice; personal possessions; privacy; exercise; diet; medical attention; medication.
- 6-1966. Prohibited psychological therapies.
- 6-1967. Essential surgery in medical emergency.
- 6-1968. Sterilization.
- 6-1969. Experimental research.
- 6-1970. Mistreatment, neglect or abuse prohibited; use of restraints; seclusion; "time-out" procedures.
- 6-1971. Performance of labor.
- 6-1972. Maintenance of records; information considered privileged and confidential; access; contents.
- 6-1973. Initiation of action to compel rights; civil remedy; sovereign immunity barred; defense to action; payment of expenses.
- 6-1974. Deprivation of civil rights; public or private employment; retention of rights; liability; immunity; exceptions.

Subchapter VI. Miscellaneous Provisions; Effective Date.

- 6-1981. Increased financial responsibility.
- 6-1982. Severability.
- 6-1983. Appropriations.
- 6-1984. Authority of Board of Education unchanged.
- 6-1985. Effective date.

Subchapter I. Statement of Purpose; Definitions.

§ 6-1901. Statement of purpose.

(a) It is the intent of the Council of the District of Columbia to:

(1) Assure that mentally retarded persons shall have all the civil and legal rights enjoyed by all other citizens of the District of Columbia and the United States;

(2) Secure for each person who may be mentally retarded, regardless of ability to pay, such habilitation as will be suited to the needs of the person, and to assure that such habilitation is skillfully and humanely provided with full respect for the person's dignity and personal integrity and in a setting least restrictive of personal liberty;

(3) Encourage and promote the development of the ability and potential of each mentally retarded person in the District to the fullest possible extent, no matter how severe his or her degree of disability;

(4) Promote the economic security, standard of living and meaningful employment of mentally retarded persons;

(5) Maximize the assimilation of mentally retarded persons into the ordinary life of the community in which they live; and

(6) Provide a mechanism for the identification of persons with mental retardation at the earliest age possible.

(b) To accomplish these purposes, the Council of the District of Columbia finds and declares that the design and delivery of care and habilitation services for mentally retarded persons shall be directed by the principles of normalization, and therefore:

(1) Community-based services and residential facilities that are least restrictive to the personal liberty of the individual shall be established for mentally retarded persons at each stage of life development;

(2) The use of institutionalization shall be abated to the greatest extent possible;

(3) Whenever care in an institution or residential facility is required, it shall be in the least restrictive setting; and

(4) Individuals placed in institutions shall be transferred to community or home environments whenever possible, consistent with professional diagnoses and recommendations. (1973 Ed., § 6-1651; Mar. 3, 1979, D.C. Law 2-137, § 102, 25 DCR 5094.)

Cross references. — As to definitions applicable to licensure of health-care and community residence facilities, hospices and home care, see § 32-1301.

Section references. — This section is referred to in §§ 6-1911, 21-2002, and 21-2047.

Temporary amendment of section. — Section 505(a) of D.C. Law 10-253 amended (a) to read as follows:

"(a) It is the intent of the Council of the District of Columbia to:

"(1) Assure that residents of the District of Columbia with mental retardation shall have

all the civil and legal rights enjoyed by all other citizens of the District of Columbia and the United States;

"(2) Secure for each resident of the District of Columbia with mental retardation, regardless of ability to pay, such habilitation as will be suited to the needs of the person, and to assure that such habilitation is skillfully and humanely provided with full respect for the person's dignity and personal integrity and in a setting least restrictive of personal liberty;

"(3) Encourage and promote the development of the ability and potential of each mentally

retarded person in the District to the fullest possible extent, no matter how severe his or her degree of disability;

"(4) Promote the economic security, standard of living and meaningful employment of mentally retarded persons;

"(5) Maximize the assimilation of mentally retarded persons into the ordinary life of the community in which they live; and

"(6) Provide a mechanism for the identification of persons with mental retardation at the earliest age possible."

Section 1301(b) of D.C. Law 10-253 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Multiyear Budget Spending Reduction and Support Act of 1995, whichever occurs first.

Emergency act amendments. — For temporary amendment of section, see § 505(a) of the Multiyear Budget Spending Reduction and Support Emergency Act of 1994 (D.C. Act 10-389, December 29, 1994, 42 DCR 197).

Legislative history of Law 2-137. — Law 2-137, the "Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978," was introduced in Council and assigned Bill No. 2-108, which was referred to the Committee on Human Resources and Aging. The Bill was adopted on first and second readings on September 19, 1978 and October 3, 1978, respectively. Signed by the Mayor on November 8, 1978, it was assigned Act No. 2-297 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-253. — Law 10-253, the "Multiyear Budget Spending Reduction and Support Temporary Act of 1995," was introduced in Council and assigned Bill No. 10-857. The Bill was adopted on first and second readings on December 21, 1994, and January 3, 1995, respectively. Deemed approved without the signature of the Mayor on January 27, 1995, it was assigned Act No.

10-401 and transmitted to both Houses of Congress for its review. D.C. Law 10-253 became effective on March 23, 1995.

Legislative intent. — The Retarded Citizens Act was intended more as a revision of the District's commitment statute than an all-embracing act regarding retarded citizens. *Nelson v. Nelson*, App. D.C., 548 A.2d 109 (1988).

Conflict of laws. — The federal Education for All Handicapped Children Act is not in conflict with and does not preempt the District Mentally Retarded Citizens Constitutional Rights and Dignity Act. *In re J.E.C.*, 117 WLR 2485 (Super. Ct. 1989).

District has ultimate responsibility for mental retardation cases within District while the federal government provides services for the mentally ill and each category has its own statutory scheme, commitment standards, treatment facilities and release provisions. *In re Hanna*, 111 WLR 497 (Super. Ct. 1983).

Standards for judging District's actions. — The purposes and goals of this section provide the standards against which the District's actions must be judged. *Maza v. District of Columbia*, 110 WLR 2229 (Super. Ct. 1982).

Assessment of damages under this chapter. — Since the whole thrust of the Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978 is not to treat mentally retarded persons as less than full citizens, a court may assess damages just as it would for a normal person who was kept in a locked ward each day, treated as a pet, not given proper care for her documented needs (both physical and mental), but was fed, clothed, and sheltered. *Maza v. District of Columbia*, 110 WLR 2229 (Super. Ct. 1982).

Cited in *In re Williams*, App. D.C., 471 A.2d 263 (1984); *In re Hanna*, App. D.C., 484 A.2d 537 (1984); *Nelson v. Nelson*, 114 WLR 2437 (Super. Ct. 1986); *In re G.T.*, App. D.C., 611 A.2d 537 (1992).

§ 6-1902. Definitions.

As used in this chapter:

(1) "Admission" means the voluntary entrance by an individual who is at least moderately mentally retarded into an institution or residential facility.

(2) "At least moderately mentally retarded" means a person who is found, following a comprehensive evaluation, to be impaired in adaptive behavior to a moderate, severe or profound degree and functioning at the moderate, severe or profound intellectual level in accordance with standard measurements as recorded in the Manual of Terminology and Classification in Mental Retardation, 1973, American Association on Mental Deficiency.

(3) "Chief Program Director" means an individual with special training and experience in the diagnosis and habilitation of mentally retarded persons, and who is a Qualified Mental Retardation Professional appointed or desig-

nated by the Director of a facility for mentally retarded persons to provide or supervise habilitation and care for residents of the facility.

(4) "Commitment" means the placement in a facility, pursuant to a court order, of an individual who is at least moderately mentally retarded at the request of the individual's parent or guardian without the consent of the individual; except it shall not include placement for respite care.

(5) "Community-based services" means non-residential specialized or generic services for the evaluation, care and habilitation of mentally retarded persons, in a community setting, directed toward the intellectual, social, personal, physical, emotional or economic development of a mentally retarded person. Such services shall include, but not be limited to, diagnosis, evaluation, treatment, day care, training, education, sheltered employment, recreation, counseling of the mentally retarded person and his or her family, protective and other social and socio-legal services, information and referral, and transportation to assure delivery of services to persons of all ages who are mentally retarded.

(6) "Comprehensive evaluation" means a study including a sequence of observations and examinations of a person leading to conclusions and recommendations formulated jointly, with dissenting opinions if any, by a group of persons with special training and experience in the diagnosis and habilitation of mentally retarded persons. The evaluation shall include, but not be limited to, a physical examination, an educational and/or vocational evaluation, a psychological evaluation, a social and recreational evaluation, and a speech and hearing evaluation.

(7) "Council" means the Council of the District of Columbia.

(8) "Court" means the Superior Court of the District of Columbia.

(9) "Department of Human Services" means the Department of Human Services of the District of Columbia.

(10) "Director" means the administrative head of a facility, or community-based service and includes superintendents.

(11) "District" means the District of Columbia government.

(12) "Education" means a systematic process of training, instruction and habilitation to facilitate the intellectual, physical, social and emotional development of a mentally retarded person.

(13) "Facility" means a public or private residence, or part thereof, which is licensed by the District as a skilled or intermediate care facility or a community residential facility (as defined in D.C. Regulation 74-15, as amended) and also includes any supervised group residence for mentally retarded persons under 18 years of age.

(14) "Habilitation" means the process by which a person is assisted to acquire and maintain those life skills which enable him or her to cope more effectively with the demands of his or her own person and of his or her own environment and to raise the level of his or her physical, intellectual, social, emotional and economic efficiency. "Habilitation" includes, but is not limited to, the provision of community-based services.

(15) "Informed consent" means consent voluntarily given in writing with sufficient knowledge and comprehension of the subject matter involved to

enable the person giving consent to make an understanding and enlightened decision, without any element of force, fraud, deceit, duress or other form of constraint or coercion.

(16) "Least restrictive alternative" means that living and/or habilitation arrangement which least inhibits an individual's independence and right to liberty. It shall include, but not be limited to, arrangements which move an individual from:

- (A) More to less structured living;
- (B) Larger to smaller facilities;
- (C) Larger to smaller living units;
- (D) Group to individual residences;
- (E) Segregated from the community to integrated with community living and programming; and/or
- (F) Dependent to independent living.

(17) "Mayor" means the Mayor of the District of Columbia.

(18) "Mental retardation advocate" means a member of the group of advocates created pursuant to § 6-1953.

(19) "Mentally retarded" means a significantly subaverage general intellectual level determined in accordance with standard measurements as recorded in the Manual of Terminology and Classification in Mental Retardation, 1973, American Association on Mental Deficiency, existing concurrently with impairment in adaptive behavior, which originates during the development period.

(20) "Normalization principle" means the principle of aiding mentally retarded persons to obtain a lifestyle as close to normal as possible, making available to them patterns and conditions of everyday life which are as close as possible to the patterns of mainstream society.

(21) "Qualified mental retardation professional" means:

(A) A psychologist with at least a master's degree from an accredited program and with specialized training or 1 year of experience in mental retardation; or

(B) A physician licensed by the Commission on Licensure to Practice the Healing Arts to practice medicine in the District and with specialized training in mental retardation or with 1 year of experience in treating the mentally retarded; or

(C) An educator with a degree in education from an accredited program and with specialized training or 1 year of experience in working with mentally retarded persons; or

(D) A social worker with:

(i) A master's degree from a school of social work accredited by the Council on Social Work Education (New York, New York), and with specialized training in mental retardation or with 1 year of experience in working with mentally retarded persons; or

(ii) With a bachelor's degree from an undergraduate social work program accredited by the Council on Social Work Education who is currently working and continues to work under the supervision of a social worker as defined in sub-subparagraph (i) of this subparagraph, and who has specialized

training in mental retardation or 1 year of experience in working with mentally retarded persons; or

(E) A rehabilitation counselor who is certified by the Commission on Rehabilitation Counselor Certification (Chicago, Illinois) and who has specialized training in mental retardation or 1 year of experience in working with mentally retarded persons; or

(F) A physical or occupational therapist with a bachelor's degree from an accredited program in physical or occupational therapy and who has specialized training or 1 year of experience in working with mentally retarded persons; or

(G) A therapeutic recreation specialist who is a graduate of an accredited program and who has specialized training or 1 year of experience in working with mentally retarded persons.

(22) "Resident" means a person admitted or committed to a facility pursuant to subchapter III of this chapter for habilitation services.

(23) "Respite care" means temporary overnight care provided to a mentally retarded person in a hospital or facility, upon application of a parent, guardian or family member, for the temporary relief of such parent, guardian or family member, who normally provides for the care of the person.

(24) "Respondent" means the person whose commitment or continued commitment is being sought in any proceeding under this chapter.

(25) "Time out" means time out from positive reinforcement, a behavior modification procedure in which, contingent upon undesired behavior, the resident is removed from the situation in which positive reinforcement is available. (1973 Ed., § 6-1652; Mar. 3, 1979, D.C. Law 2-137, § 103, 25 DCR 5094.)

Section references. — This section is referred to in §§ 6-1911 and 16-2315.

Temporary amendment of section. — Section 505(b)(1) of D.C. Law 10-253 amended (3) to read as follows:

"(3) 'Chief Program Director' means an individual with special training and experience in the diagnosis and habilitation of mentally retarded persons and who is a Qualified Mental Retardation Professional appointed or designated by the Director of a facility for mentally retarded persons to provide or supervise habilitation and care for customers of the facility."

Section 505(b)(2) of D.C. Law 10-253 inserted a (5A) to read as follows:

"(5A) 'Competent' means to have the mental capacity to appreciate the nature and implications of a decision to enter a facility, choose between or among alternatives presented, and communicate the choice in an unambiguous manner."

Section 505(b)(3) of D.C. Law 10-253 amended (6) to read as follows:

"(6) 'Comprehensive evaluation' means an assessment of a person with mental retardation by persons with special training and experience in the diagnosis and habilitation of persons

with mental retardation, which includes a sequence of observations and examinations intended to determine the person's strengths, developmental needs and need for services. The initial comprehensive evaluation shall include, but not be limited to, a physical examination that includes the person's medical history; an educational evaluation, vocational evaluation, or both; a psychological evaluation, including an evaluation of cognitive and adaptive functioning levels; a social evaluation; and a dental examination."

Section 505(b)(4) of D.C. Law 10-253 inserted a (6A) to read as follows:

"(6A) 'Customer' means a person admitted to or committed to a facility pursuant to subchapter III of this chapter for habilitation or care."

Section 505(b)(5) of D.C. Law 10-253 amended (22) to read as follows:

"(22) 'Resident of the District of Columbia' means a person who maintains his or her principal place of abode in the District of Columbia, including a person with mental retardation who would be a resident of the District of Columbia if the person had not been placed in an out-of-state facility by the District. A person with mental retardation who is under the age of

21 years shall be deemed to be a resident of the District of Columbia if the custodial parent of the person with mental retardation is a District resident."

Section 505(b)(6) of D.C. Law 10-253 inserted a (24A) to read as follows:

"(24A) 'Screening' means an assessment of a person with mental retardation in accordance with standards issued by the Accreditation Council for Services for People with Developmental Disabilities, which is designed to determine if a further evaluation of the person with mental retardation or other interventions are indicated."

Section 1301(b) of D.C. Law 10-253 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Multiyear Budget Spending Reduction and Support Act of 1995, whichever occurs first.

Emergency act amendments. — For temporary amendment of section, see § 505(b) of the Multiyear Budget Spending Reduction and Support Emergency Act of 1994 (D.C. Act 10-389, December 29, 1994, 42 DCR 197).

Legislative history of Law 2-137. — See note to § 6-1901.

Legislative history of Law 10-253. — See note to § 6-1901.

References in text. — The Department of Human Resources was replaced by the Department of Human Services pursuant to Reorganization Plan No. 2 of 1979, dated February 21, 1980.

Inclusion of words "at least moderately mentally retarded" in definition of "admission" in paragraph (1) of this section was an oversight by the D.C. Council, and voluntary

admissions are available to mentally retarded persons regardless of their degree of retardation. District of Columbia Dep't of Human Servs. v. Bicksler, App. D.C., 501 A.2d 1 (1985).

Director. — For the purposes of § 6-1929, "director" includes not only the director of the facility, but also those in a supervisory role, such as District of Columbia officials who placed ward in the facility. In re Cook, 118 WLR 1057 (Super. Ct. 1990).

"Moderately mentally retarded" can include mildly mentally retarded. — Section 6-1901 et seq. can apply to an individual who has been diagnosed by expert witnesses as moderately mentally retarded, as defined in paragraph (2) of this section, even though that person's raw I.Q. scores place him within the range of mild mental retardation, which, if deemed dispositive, would exclude him from this section's applicability. In re Brooks, 112 WLR 353 (Super. Ct. 1984).

Government entity not "guardian." — The term "guardian," as used in the definition of respite care, does not include a government entity such as the Department of Human Services, even if it acts as provider of care to a mentally retarded person; accordingly, the department was not entitled to transfer mentally retarded person from one facility to another without notice or hearing under the so-called respite care proviso. In re Williams, App. D.C., 471 A.2d 263 (1984).

Cited in Maza v. District of Columbia, 110 WLR 2229 (Super. Ct. 1982); In re Hanna, 111 WLR 497 (Super. Ct. 1983); In re W.F., 116 WLR 1913 (Super. Ct. 1988).

Subchapter II. Determination of Need for Mental Retardation Facilities and Services in the District.

§ 6-1911. Determination of need for mental retardation facilities and services in the District.

The Mayor shall determine and report to the Council within 1 year of the enactment of this chapter the current and projected needs in the District for facilities and services for mentally retarded persons, giving due consideration to the statement of purpose as noted in § 6-1901, and a timetable for establishing such facilities or services. The report shall be developed with the assistance, as necessary, from the Department of Human Services, the District of Columbia Developmental Disabilities Planning Council, the Statewide Health Coordinating Council, the Board of Education of the District of Columbia, the Department of Recreation, the Department of Housing and Community Development, the Department of Transportation and the Department of General Services. It shall be based on a determination of the projected incidence of mental retardation in the District, and on comprehensive evalu-

ations conducted within 8 months of the enactment of this chapter of all residents in the facility for the mentally retarded known as Forest Haven. It shall also be based on evaluations of the needs of mentally retarded persons who present themselves for services within 6 months of the enactment of this chapter, by the Director of such services. The report shall include, but not be limited to, an in-depth analysis of the need for and cost of infant stimulation programs, facilities, work and education programs, recreation programs, transportation services and other community-based services as set forth in paragraph (5) of § 6-1902 for mildly, moderately, severely and profoundly mentally retarded persons. (1973 Ed., § 6-1653; Mar. 3, 1979, D.C. Law 2-137, § 201, 25 DCR 5094.)

Cross references. — As to license requirements for health-care and community residence facilities, hospices and home care, see § 32-1302.

Temporary repeal of section. — Section 505(c) of D.C. Law 10-253 repealed this section.

Section 1301(b) of D.C. Law 10-253 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Multiyear Budget Spending Reduction and Support Act of 1995, whichever occurs first.

Emergency act amendments. — For temporary repeal of section, see § 505(c) of the Multiyear Budget Spending Reduction and Support Emergency Act of 1994 (D.C. Act 10-389, December 29, 1994, 42 DCR 197).

Legislative history of Law 2-137. — See note to § 6-1901.

Legislative history of Law 10-253. — See note to § 6-1901.

References in text. — The Department of Human Resources was replaced by the Department of Human Services pursuant to Reorganization Plan No. 2 of 1979, dated February 21, 1980.

The functions of the Department of Transportation were transferred to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984.

The functions of the Department of General Services were transferred, in part, to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984, and transferred, in part, to the Department of Administrative Services by Reorganization Plan No. 5 of 1983, effective March 1, 1984.

Subchapter III. Admission, Commitment, Discharge, Transfer, Respite Care.

§ 6-1921. Competence of individual to refuse commitment.

No individual 14 years of age or older who is or is believed to be mentally retarded shall be committed to a facility if the individual is determined by the Court to be competent to refuse such commitment. For purposes of this chapter, persons 14 years of age and older shall be presumed competent to refuse commitment. (1973 Ed., § 6-1654; Mar. 3, 1979, D.C. Law 2-137, § 301, 25 DCR 5094.)

Legislative history of Law 2-137. — See note to § 6-1901.

Cited in In re Hanna, 111 WLR 497 (Super. Ct. 1983).

§ 6-1922. Voluntary admission.

(a) Any individual 14 years of age or older who is, may be, or has been diagnosed mentally retarded may apply to a Director of a facility for voluntary admission to that facility for habilitation and care. The Director may admit the individual: Provided, that the Director has determined that the individual is at least 14 years of age.

(b) Within 3 days of the admission, the Director shall notify the Court of the admission and shall certify to the Court that a comprehensive evaluation shall be conducted and an individual habilitation plan developed within 10 days of the admission.

(c)(1) The Court shall promptly appoint an appropriate officer to determine whether the individual is competent to admit himself or herself to the facility and whether the admission is voluntary.

(2) The determination of competency shall consider, but not be limited to, an inquiry into the individual's understanding of what habilitation and care will be provided in the facility, and what alternative means of habilitation and care are available from community-based services.

(3) If the officer determines that there is a substantial question regarding either the voluntariness of the admission or the competency of the individual, the officer shall so advise the Court, and the Court shall promptly conduct a hearing in accordance with the procedures established in subchapter IV of this chapter to resolve the issues of competency and/or voluntariness.

(4) If the Court determines that the admission is not voluntary, the Court shall order that the individual be discharged from the facility. If the Court finds that the individual is not competent to admit himself or herself, it may order that that person be discharged if it determines that discharge would be in the individual's best interest, or it may appoint a guardian ad litem to represent the individual in a subsequent hearing to be held promptly to determine the appropriate placement, if any, of the individual. The individual may remain in the facility until the Court hearing unless the Court decides that this would not be in the individual's best interest. (1973 Ed., § 6-1655; Mar. 3, 1979, D.C. Law 2-137, § 302, 25 DCR 5094.)

Section references. — This section is referred to in §§ 6-1942, 6-1949, and 6-1953.

Temporary amendment of section. — Section 505(d) of D.C. Law 10-253 amended (b) to read as follows:

“(b) Within 10 days of the admission, the Director shall notify the Court of the admission and shall certify to the Court that a comprehensive evaluation shall be conducted and an individual habilitation plan developed within 30 days of the admission.”

Section 1301(b) of D.C. Law 10-253 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Multiyear Budget Spending Reduction and Support Act of 1995, whichever occurs first.

Emergency act amendments. — For temporary amendment of section, see § 505(d) of the Multiyear Budget Spending Reduction and Support Emergency Act of 1994 (D.C. Act 10-389, December 29, 1994, 42 DCR 197).

Legislative history of Law 2-137. — See note to § 6-1901.

Legislative history of Law 10-253. — See note to § 6-1901.

Admissions occurring prior to enactment of section entitled to periodic re-

view. — The admissions requirements of this section provide a rational and comprehensible basis for excluding admissions occurring after the statute was enacted from the periodic review provisions of § 6-1951(a), but for persons admitted before the statute was enacted, that basis does not apply, and exclusion from periodic review cannot be justified by reliance on it. *In re Brooks*, 111 WLR 1301 (Super. Ct. 1983).

Voluntary admission available regardless of degree of mental retardation. — The inclusion of the words “at least moderately mentally retarded” in the definition of “admission” in § 6-1902(1) was an oversight by the D.C. Council, and voluntary admissions are available to mentally retarded persons regardless of their degree of retardation. *District of Columbia Dep’t of Human Servs. v. Bicksler*, App. D.C., 501 A.2d 1 (1985).

A mentally retarded person who is in need of residential habilitation, but is not at least moderately mentally retarded, may nevertheless obtain such habilitation through the voluntary admission procedures set forth in this section. *District of Columbia Dep’t of Human Servs. v. Bicksler*, App. D.C., 501 A.2d 1 (1985).

§ 6-1923. Application by individual for out-patient non-residential habilitation.

Any individual 14 years of age or older who is, may be or has been diagnosed mentally retarded may apply to any hospital, clinic or facility, or other community-based service owned or operated by, or under contract with, the District for out-patient nonresidential habilitation. Applications shall be made to the Director of the hospital, clinic, facility or service, or to the Department of Human Services. If an application is filed with a Director and the Director determines that the particular hospital, clinic, facility or community-based service cannot provide the necessary habilitation, he or she shall refer the individual to the Department of Human Services, and the Department of Human Services shall assist the individual in locating a facility, hospital, clinic or service which can provide the necessary habilitation. (1973 Ed., § 6-1656; Mar. 3, 1979, D.C. Law 2-137, § 303, 25 DCR 5094.)

Legislative history of Law 2-137. — See note to § 6-1901.

References in text. — The Department of Human Resources was replaced by the Depart-

ment of Human Services pursuant to Reorganization Plan No. 2 of 1979, dated February 21, 1980.

§ 6-1924. Petition for commitment of individual 14 years of age or older filed by parent or guardian.

(a) A written petition by a parent or guardian may be filed with the Court to have an individual 14 years of age or older, who is or is believed to be mentally retarded, committed to a facility. Upon the filing of such petition, the Court shall promptly conduct a hearing in accordance with the procedures set forth in subchapter IV of this chapter. If the Court determines that the individual is competent to refuse such commitment and the individual so refuses, the Court shall dismiss the petition and order that the individual not be committed to a facility.

(b) If the Court determines that the individual is not competent to refuse commitment, the Court shall determine whether to order the commitment. The Court shall order the commitment only if it determines beyond a reasonable doubt that:

(1) Based on a comprehensive evaluation of the individual performed within 6 months prior to the hearing, the individual is at least moderately mentally retarded and requires habilitation;

(2) Commitment to a facility is necessary in order for the individual to receive the habilitation indicated by the individual habilitation plan required and defined under § 6-1943;

(3) The facility to which commitment is sought, its sponsoring agency, or the Department of Human Services is capable of providing the required habilitation; and

(4) Commitment to that facility would be the least restrictive means of providing the habilitation.

(c) The facility, its sponsoring agency, or the Department of Human Services shall provide a written certification to the Court, before commitment to the

facility is ordered, that the habilitation indicated by the individual habitation plan will be implemented. (1973 Ed., § 6-1657; Mar. 3, 1979, D.C. Law 2-137, § 304, 25 DCR 5094.)

Section references. — This section is referred to in §§ 6-1928, 6-1943, 6-1947, 6-1949, and 6-1953.

Temporary amendment of section. — Section 505(e) of D.C. Law 10-253 amended (b)(1) to read as follows:

“(b) If the court determines that the individual is not competent to refuse commitment, the Court shall determine whether to order the commitment. The Court shall order the commitment only if it determines beyond a reasonable doubt that:

“(1) Based on a comprehensive evaluation of the individual performed within 1 year prior to the hearing, the individual is at least moderately mentally retarded and requires habilitation;”

Section 1301(b) of D.C. Law 10-253 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Multiyear Budget Spending Reduction and Support Act of 1995, whichever occurs first.

Emergency act amendments. — For temporary amendment of section, see § 505(e) of the Multiyear Budget Spending Reduction and Support Emergency Act of 1994 (D.C. Act 10-389, December 29, 1994, 42 DCR 197).

Legislative history of Law 2-137. — See note to § 6-1901.

Legislative history of Law 10-253. — See note to § 6-1901.

References in text. — The Department of Human Resources was replaced by the Department of Human Services pursuant to Reorganization Plan No. 2 of 1979, dated February 21, 1980.

Construction of § 6-1951 with this section. — Section 6-1951 must not be viewed in isolation and applied to the exclusion of this section. District of Columbia Dep't of Human Servs. v. Bicksler, App. D.C., 501 A.2d 1 (1985).

Application of rights provided by chapter. — The right not to be involuntarily com-

mitted unless a court finds beyond a reasonable doubt that the individual is at least moderately mentally retarded, like all other rights provided to mentally disabled persons under this chapter, was intended to be afforded to all such persons, not just to those who were committed after the effective date of the chapter. District of Columbia Dep't of Human Servs. v. Bicksler, App. D.C., 501 A.2d 1 (1985).

Conflict of laws. — The federal Education for All Handicapped Children Act (20 U.S.C. §§ 1411 et seq.) is not in conflict with and does not preempt this Act, the District Mentally Retarded Citizens Constitutional Rights and Dignity Act. In re J.E.C., 117 WLR 2485 (Super. Ct. 1989).

Continued commitment of mildly mentally retarded person. — Section 6-1951 does not require that the commitment of a mildly mentally retarded person be continued, based on her benefit from habilitation and continued need for residential habilitation, since this section mandates that she be discharged from her commitment because she is not at least moderately mentally retarded. District of Columbia Dep't of Human Servs. v. Bicksler, App. D.C., 501 A.2d 1 (1985).

Criminal proceedings against mildly retarded juvenile. — Standard of incompetency prescribed by § 16-2315 applies to criminal proceedings against a mildly retarded juvenile; thus a mildly retarded juvenile will be judged competent to stand trial under § 16-2315 and would not be released because he fell outside the standard for commitment under this section. In re W.F., 116 WLR 1913 (Super. Ct. 1988).

Cited in Maza v. District of Columbia, 110 WLR 2229 (Super. Ct. 1982); In re Hanna, 111 WLR 497 (Super. Ct. 1983); In re Brooks, 111 WLR 1301 (Super. Ct. 1983).

§ 6-1925. Application by parent or guardian for nonresidential habilitation.

Any parent or guardian may apply on behalf of an individual under 14 years of age who is or is believed to be mentally retarded to any hospital, clinic, facility or community-based service owned or operated by, or under contract with, the District for nonresidential habilitation. Applications shall be made to the Director of the hospital, clinic, or service, or to the Department of Human Services. If an application is filed with a Director and the Director determines that the particular hospital, clinic, facility or community-based service cannot

provide the necessary habilitation, he or she shall refer the parent or guardian to the Department of Human Services, and the Department of Human Services shall assist the parent or guardian in locating a facility, hospital, clinic or service which can provide the required habilitation. (1973 Ed., § 6-1658; Mar. 3, 1979, D.C. Law 2-137, § 305, 25 DCR 5094.)

Legislative history of Law 2-137. — See note to § 6-1901.

References in text. — The Department of Human Resources was replaced by the Depart-

ment of Human Services pursuant to Reorganization Plan No. 2 of 1979, dated February 21, 1980.

§ 6-1926. Petition for commitment of individual under 14 years of age filed by parent or guardian.

(a) A parent or guardian may file a written petition with the Court to have an individual under 14 years of age who is or is believed to be mentally retarded committed to a facility. The Court shall promptly conduct a hearing in accordance with the procedures set forth in subchapter IV of this chapter to determine whether the Court shall order the commitment. The Court shall order such commitment only if it determines beyond a reasonable doubt that:

(1) Based on a comprehensive evaluation of the individual performed within 6 months prior to the hearing, the individual is at least moderately mentally retarded and requires habilitation;

(2) Commitment to a facility is necessary in order for the individual to receive the habilitation indicated by the individual habilitation plan required under § 6-1943;

(3) The facility to which commitment is sought, its sponsoring agency, or the Department of Human Services is capable of providing the required habilitation; and

(4) Commitment to that facility would be the least restrictive means of providing the habilitation.

(b) The facility, its sponsoring agency, or the Department of Human Services shall provide a written statement to the Court, before commitment to the facility is ordered, that the habilitation indicated by the individual's habilitation plan will be implemented. (1973 Ed., § 6-1659; Mar. 3, 1979, D.C. Law 2-137, § 306, 25 DCR 5094.)

Section references. — This section is referred to in §§ 6-1928, 6-1943, 6-1949, and 6-1953.

Temporary amendment of section. — Section 505(f) of D.C. Law 10-253 amended (a)(1) to read as follows:

"(a) A parent or guardian may file a written petition with the court to have an individual under 14 years of age who is or is believed to be mentally retarded committed to a facility. The Court shall promptly conduct a hearing in accordance with the procedures set forth in subchapter IV of this chapter to determine whether the court shall order the commitment. The Court shall order such commitment only if it determines beyond a reasonable doubt that:

"(1) Based on a comprehensive evaluation of the individual performed within 1 year prior to the hearing, the individual is at least moderately mentally retarded and requires habilitation;"

Section 1301(b) of D.C. Law 10-253 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Multiyear Budget Spending Reduction and Support Act of 1995, whichever occurs first.

Emergency act amendments. — For temporary amendment of section, see § 505(f) of the Multiyear Budget Spending Reduction and Support Emergency Act of 1994 (D.C. Act 10-389, December 29, 1994, 42 DCR 197).

Legislative history of Law 2-137. — See note to § 6-1901.

Legislative history of Law 10-253. — See note to § 6-1901.

References in text. — The Department of Human Resources was replaced by the Department of Human Services pursuant to Reorganization Plan No. 2 of 1979, dated February 21, 1980.

Symmetry of treatment under this section and juvenile delinquency proceedings. — Section 16-2315 prescribes a standard of incompetency for juvenile delinquency proceedings which is precisely the same as the

standard required for commitment of mentally retarded juveniles under this section and D.C. Code § 21-1114. In both instances, the respondent must be “at least moderately mentally retarded,” as defined in § 6-1902(2). The result of this symmetry is that a child offender will receive treatment through either the juvenile division or a facility for the mentally retarded. *In re W.F.*, 116 WLR 1913 (Super. Ct. 1988).

Cited in *In re Hanna*, 111 WLR 497 (Super. Ct. 1983); *In re Brooks*, 111 WLR 1301 (Super. Ct. 1983); *In re W.A.F.*, App. D.C., 573 A.2d 1264 (1990).

§ 6-1927. Immediate discharge from facility upon request by individual.

Any individual 14 years of age or older who is admitted to a facility shall have the right to immediate discharge from the facility upon written request to the Director of the facility. (1973 Ed., § 6-1660; Mar. 3, 1979, D.C. Law 2-137, § 307, 25 DCR 5094.)

Legislative history of Law 2-137. — See note to § 6-1901.

§ 6-1928. Discharge from commitment upon request by parent or guardian.

Residents committed pursuant to § 6-1924 or § 6-1926 shall be discharged if the parent or guardian who petitioned for the commitment requests the resident's release in writing to the Court and the Court determines, based on consultation with the resident, his or her counsel and the resident's mental retardation advocate, if one has been appointed, that the resident consents to such release. Such residents also shall be discharged upon their own request when they have gained competence to make such a decision and have reached their 14th birthday. A hearing may be conducted pursuant to provisions of subchapter IV of this chapter to determine the question of competence. (1973 Ed., § 6-1661; Mar. 3, 1979, D.C. Law 2-137, § 308, 25 DCR 5094.)

Temporary amendment of section. — Section 505(g) of D.C. Law 10-253 amended this section to read as follows:

“Customers committed pursuant to § 6-1924 or § 6-1926 shall be discharged if the parent or guardian who petitioned for the commitment requests the customer's release in writing to the Court and the Court determines, based on consultation with the customer, his or her counsel and the customer's mental retardation advocate, if one has been appointed, that the customer consents to such release. Such customers also shall be discharged upon their own request when they have gained competence to make such a decision and have reached their 14th birthday. A hearing may be conducted

pursuant to provisions of subchapter IV of this chapter to determine the question of competence.”

Section 1301(b) of D.C. Law 10-253 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Multiyear Budget Spending Reduction and Support Act of 1995, whichever occurs first.

Emergency act amendments. — For temporary amendment of section, see § 505(g) of the Multiyear Budget Spending Reduction and Support Emergency Act of 1994 (D.C. Act 10-389, December 29, 1994, 42 DCR 197).

Legislative history of Law 2-137. — See note to § 6-1901.

Legislative history of Law 10-253. — See note to § 6-1901.

§ 6-1929. Transfer of resident from one facility to another.

(a) The Director of a facility may recommend to the Court that a resident committed to the facility be transferred to another facility if the Director determines that it would be beneficial and consistent with the habilitation needs of the resident to do so. Notice of the recommendation shall be served on the resident, the resident's counsel, the resident's parent or guardian who petitioned for the commitment and the resident's mental retardation advocate, if one has been appointed. If the proposed transfer is determined by the Court to be a transfer to a more restrictive facility, a mandatory hearing shall be conducted promptly in accordance with the procedures established in subchapter IV of this chapter. If the Court determines that the proposed transfer would be to a less restrictive facility, a Court hearing shall be held only if the resident or his or her parent or guardian requests a hearing by petitioning the Court in writing within 10 days of being notified by the Court of its determination. The hearing shall be held promptly following the request for the hearing. In deciding whether to authorize the transfer, the Court shall consider whether the proposed facility can provide the necessary habilitation and whether it would be the least restrictive means of providing such habilitation. Due consideration shall be given to the relationship of the resident to his or her family, guardian or friends so as to maintain relationships and encourage visits beneficial to the relationship.

(b) A resident admitted to a facility can be transferred to another facility if the resident consents to the transfer.

(c) Nothing in this section shall be construed to prohibit transfer of a resident to a health care facility without prior Court approval in an emergency situation when the life of the resident is in danger. In such circumstances, consent of the resident, or parent or guardian who sought the commitment shall be obtained prior to the transfer. In the event the resident cannot consent and there is no person who can be reasonably contacted, such transfer may be made upon the authorization of the Director of the facility, with notice promptly given to the parent or guardian. (1973 Ed., § 6-1662; Mar. 3, 1979, D.C. Law 2-137, § 309, 25 DCR 5094.)

Section references. — This section is referred to in § 6-1963.

Temporary amendment of section. — Section 505(h) and (i) of D.C. 10-253 amended this section to read as follows:

"(a) The Department of Human Services may recommend to the Court that a customer committed to the facility be transferred to another facility if the Department of Human Services determines that it would be beneficial and consistent with the habilitation needs of the customer to do so. Notice of the recommendation shall be served on the customer, the customer's counsel, the customer's parent or guardian who petitioned for the commitment

and the customer's mental retardation advocate, if one has been appointed. If the proposed transfer is determined by the Court to be a transfer to a more restrictive facility, a mandatory hearing shall be conducted promptly in accordance with the procedures established in subchapter IV of this chapter. If the Court determines that the proposed transfer would be to a less restrictive facility, a Court hearing shall be held only if the customer or his or her parent or guardian requests a hearing by petitioning the Court in writing within 10 days of being notified by the Court of its determination. The hearing shall be held promptly following the request for the hearing. In deciding

whether to authorize the transfer, the Court shall consider whether the proposed facility can provide the necessary habilitation and whether it would be the least restrictive means of providing such habilitation. Due consideration shall be given to the relationship of the customer to his or her family, guardian or friends so as to maintain relationships and encourage visits beneficial to the relationship.

"(b) A customer admitted to a facility can be transferred to another facility if the customer consents to the transfer.

"(c) Nothing in this section shall be construed to prohibit transfer of a customer to a health care facility without prior Court approval in an emergency situation when the life of the customer is in danger. In such circumstances, consent of the customer, or parent or guardian who sought the commitment shall be obtained prior to the transfer. In the event the customer cannot consent and there is no person who can be reasonably contacted, such transfer may be made upon the authorization of the Director of the facility, with notice promptly given to the parent or guardian."

Section 1301(b) of D.C. Law 10-253 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of

the Multiyear Budget Spending Reduction and Support Act of 1995, whichever occurs first.

Emergency act amendments. — For temporary amendment of section, see § 505(h) and (i) of the Multiyear Budget Spending Reduction and Support Emergency Act of 1994 (D.C. Act 10-389, December 29, 1994, 42 DCR 197).

Legislative history of Law 2-137. — See note to § 6-1901.

Legislative history of Law 10-253. — See note to § 6-1901.

Director. — For the purposes of this section, "director" includes not only the director of the facility, but also those in a supervisory role, such as District of Columbia officials who placed ward in the facility. In re Cook, 118 WLR 1057 (Super. Ct. 1990).

Department may not transfer mentally retarded person without notice or hearing. — The Department of Human Services was not entitled to transfer a mentally retarded person from one facility to another without notice or hearing under the so-called respite care proviso of § 6-1902(4). In re Williams, App. D.C., 471 A.2d 263 (1984).

Cited in United States v. Ellerbee, App. D.C., 481 A.2d 473 (1984).

§ 6-1930. Discharge from residential care.

The Director shall discharge any resident admitted or committed pursuant to this subchapter if, in the judgment of the Chief Program Director, the results of a comprehensive evaluation, which shall be performed at least annually, indicate that residential care is no longer advisable. If the resident, the resident's parent or guardian, the resident's counsel, or the mental retardation advocate objects to the discharge, he or she may file a petition with the Court requesting a hearing in accordance with the procedures set forth in subchapter IV of this chapter. The resident shall not be discharged prior to the hearing. (1973 Ed., § 6-1663; Mar. 3, 1979, D.C. Law 2-137, § 310, 25 DCR 5094.)

Legislative history of Law 2-137. — See note to § 6-1901.

Cited in In re Hanna, 111 WLR 497 (Super. Ct. 1983).

§ 6-1931. Inability to pay for habilitation.

No mentally retarded person who resides in the District shall be denied habilitation in facilities or from community-based services owned or operated by, or under contract with, the District because of inability to pay for such habilitation. (1973 Ed., § 6-1664; Mar. 3, 1979, D.C. Law 2-137, § 311, 25 DCR 5094.)

Temporary amendment of section. — Section 505(j) of D.C. Law 10-253 amended this section to read as follows:

"(a) Any person with mental retardation who receives habilitation, care, or both from the

District shall pay to the District the costs of the services if the person with mental retardation has the financial means to pay for the services.

"(b) If the person with mental retardation does not pay the costs of habilitation, care, or

both received by the person, the court shall issue to the person and the legal representative of the person a citation to show cause why the person should not be adjudged to pay a portion or all of the expenses of habilitation, care, or both of the person with mental retardation. The citation shall be served at least 10 days before the show cause hearing. If, upon the hearing, it appears to the court that the person with mental retardation has sufficient resources to pay the full costs of habilitation, care, or both received by the person with mental retardation, the court may order the payment of the full costs. If upon the hearing it appears to the court that the person with mental retardation does not have sufficient resources to pay the full costs of habilitation, care, or both received by the person with mental retardation, the court may order the payment of a reasonable amount of the costs of services received based on the person's resources. The court may order the person with mental retardation to make payments quarterly, monthly, or at any other interval deemed appropriate by the court. The order may be enforced against any property of the person with mental retardation as if the order were an order for temporary alimony in a divorce case.

"(c) The executor of the estate of a person with mental retardation who receives habilitation, care, or both from the District shall pay to the District the costs of the services from the estate of the person with mental retardation if there are sufficient funds to pay for the services. The Mayor may examine the executor, under oath, to determine whether the estate is sufficient to pay the costs.

"(d) If the executor does not pay the costs of habilitation, care, or both received by the person with mental retardation, the court shall issue to the executor a citation to show cause why the executor should not be adjudged to pay, from the estate of the person with mental retardation, a portion or all of the expenses of habilitation, care, or both of the person with mental retardation. The citation shall be served at least 10 days before the show cause hearing. If, upon the hearing, it appears to the court that the estate of the person with mental retardation is sufficient to pay the full costs of habilitation, care, or both received by the per-

son with mental retardation the court may order the payment of the full costs from the estate. If, upon the hearing, it appears to the court that the estate of the person with mental retardation is not sufficient to pay the full costs of habilitation, care, or both received by the person with mental retardation, the court may order the payment of a reasonable amount of the costs of services received based on the value of the estate. The court may order the executor of the estate to make payments quarterly, monthly, or at any other interval deemed appropriate by the court. The order may be enforced against any property of the person with mental retardation as if the order were an order for temporary alimony in a divorce case.

"(e) Notwithstanding subsections (a) or (b) of this section, no person with mental retardation who is a resident of the District of Columbia shall be denied habilitation or care by any facility owned or operated by the District, or by any community-based organization that has a contract with the District to provide habilitation or care to persons with mental retardation because the person with mental retardation does not have the financial means to pay for habilitation or care.

"(f) Nothing in this chapter shall be construed to require a person with mental retardation or the executor of the estate of a person with mental retardation to reimburse the District for services received before March 3, 1979.

"(g) Nothing in this chapter shall be construed to create an entitlement to services at District expense for a person with mental retardation who is not a resident of the District of Columbia."

Section 1301(b) of D.C. Law 10-253 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Multiyear Budget Spending Reduction and Support Act of 1995, whichever occurs first.

Emergency act amendments. — For temporary amendment of section, see § 505(j) of the Multiyear Budget Spending Reduction and Support Emergency Act of 1994 (D.C. Act 10-389, December 29, 1994, 42 DCR 197).

Legislative history of Law 2-137. — See note to § 6-1901.

Legislative history of Law 10-253. — See note to § 6-1901.

§ 6-1932. Court hearing required prior to commitment.

No mentally retarded person shall be committed to a facility under this chapter prior to the Court hearing required under this subchapter. (1973 Ed., § 6-1665; Mar. 3, 1979, D.C. Law 2-137, § 312, 25 DCR 5094.)

Legislative history of Law 2-137. — See note to § 6-1901.

§ 6-1933. Effect of determination of incompetency to refuse commitment.

A determination by the Court under this subchapter that an individual 14 years of age or older is incompetent to refuse commitment shall not be relevant to a determination of the individual's competency with respect to other matters not considered by the Court. (1973 Ed., § 6-1666; Mar. 3, 1979, D.C. Law 2-137, § 313, 25 DCR 5094.)

Legislative history of Law 2-137. — See note to § 6-1901.

§ 6-1934. Rules and regulations governing respite care.

(a) The Department of Human Services shall promulgate rules and regulations governing the provision of respite care for mentally retarded persons. These shall provide that periods of respite care shall not exceed 42 days in a 12-month period without specific authorization by the Court after a hearing conducted in accordance with subchapter IV of this chapter.

(b) Should any person be detained for respite care for a period exceeding 42 days in a 12-month period without specific authorization by the Court after a hearing conducted in accordance with subchapter IV of this chapter, he or she shall be promptly discharged. (1973 Ed., § 6-1667; Mar. 3, 1979, D.C. Law 2-137, § 314, 25 DCR 5094.)

Legislative history of Law 2-137. — See note to § 6-1901.

References in text. — The Department of Human Resources was replaced by the Department of Human Services pursuant to Reorganization Plan No. 2 of 1979, dated February 21, 1980.

Government entity not "guardian." — The term "guardian," as used in the § 6-1902

definition of respite care, does not include a government entity such as the Department of Human Services, even if it acts as provider of care to a mentally retarded person; accordingly, the department was not entitled to transfer mentally retarded person from one facility to another without notice or hearing under the so-called respite care proviso of § 6-1902(4). In re Williams, App. D.C., 471 A.2d 263 (1984).

Subchapter IV. Hearing and Review Procedures.

§ 6-1941. Commencement of commitment proceedings; filing of written petition.

Proceedings for the commitment of an individual pursuant to subchapter III of this chapter shall be commenced by the filing of a written petition with the Court in the manner and form prescribed by the Court. The petition may be filed by a parent or guardian with respect to an individual who is or is believed to be mentally retarded. If filed by the parent or guardian, a copy of the petition shall be served on the respondent and on his or her counsel, retained or appointed pursuant to § 6-1942. (1973 Ed., § 6-1668; Mar. 3, 1979, D.C. Law 2-137, § 401, 25 DCR 5094.)

Section references. — This section is referred to in § 6-1943.

Legislative history of Law 2-137. — See note to § 6-1901.

Cited in *Maza v. District of Columbia*, 110 WLR 2229 (Super. Ct. 1982).

§ 6-1942. Representation by counsel.

Individuals whose admission to a facility under § 6-1922 has been questioned on grounds of their competency or the voluntariness of the admission, have the right to be represented by counsel, retained or appointed by the Court, in any proceeding held before the Court in accordance with § 6-1922(c), and they shall be informed by the Court of this right. Respondents shall be represented by counsel in any proceeding before the Court, and shall be so informed by the Court. If an individual whose admission is questioned requests the appointment of counsel or if a respondent fails or refuses to obtain counsel, the Court shall appoint counsel to represent the individual or respondent. Whenever possible, counsel shall be appointed who has had experience in the mental retardation area. Counsel appointed to represent respondents, and counsel appointed to represent individuals whose admission has been questioned but who are unable to pay for such counsel, shall be awarded compensation by the Court for his or her services in an amount determined by the Court to be fair and reasonable. (1973 Ed., § 6-1669; Mar. 3, 1979, D.C. Law 2-137, § 402, 25 DCR 5094.)

Section references. — This section is referred to in § 6-1941.

Cited in *Maza v. District of Columbia*, 110 WLR 2229 (Super. Ct. 1982).

Legislative history of Law 2-137. — See note to § 6-1901.

§ 6-1943. Comprehensive evaluation report and individual habilitation plan required; contents; copies.

(a) If a petition filed in accordance with § 6-1941 is not accompanied by a comprehensive evaluation report based on an evaluation which has been performed within 6 months prior to the hearing and an individual habilitation plan which has been prepared within 30 days of the filing of the petition, the Court shall immediately order that a comprehensive evaluation be conducted and an individual habilitation plan be written.

(b) A written report setting forth the results of the comprehensive evaluation and a copy of the habilitation plan shall be submitted to the Court. The report shall indicate:

- (1) Whether or to what degree the individual or respondent is mentally retarded;
- (2) What habilitation is needed; and
- (3) The record of habilitation and care, if any.

(c) The individual habilitation plan shall be developed by the same persons who conduct the comprehensive evaluation (except where the comprehensive evaluation has been performed by persons not geographically accessible to the District) working jointly with the person who is the subject of the plan, and such person's parent or guardian who petitioned for the commitment. In cases

where the comprehensive evaluation has been performed by persons not geographically accessible to the District, the Court shall designate other appropriate and professionally qualified persons to develop the plan. The plan shall contain the following:

(1) A statement of the nature of the specific strengths, limitations and specific needs of the person who is the subject of the plan;

(2) A description of intermediate and long-range habilitation goals with a projected timetable for their attainment;

(3) A statement of, and an explanation for, the plan of habilitation designed to achieve these intermediate and long-range goals;

(4) A statement of the objective criteria, and an evaluation procedure and schedule for determining whether the goals are being achieved;

(5) A statement of the least restrictive setting for habilitation necessary to achieve the habilitation goals; and

(6) Criteria for release to less restrictive settings for habilitation and living, including criteria for discharge and a projected date for discharge if commitment is recommended by the plan.

(d) A copy of the report and the plan shall be provided to the individual or respondent and his or her counsel, and to the parent or guardian if the petition was filed under § 6-1924 or § 6-1926, at least 10 days prior to the hearing. If the petition was accompanied by a comprehensive evaluation and plan, copies of the report and plan shall be provided to the respondent and his or her counsel within 3 days of the filing of the petition. (1973 Ed., § 6-1670; Mar. 3, 1979, D.C. Law 2-137, § 403, 25 DCR 5094.)

Section references. — This section is referred to in §§ 6-1924, 6-1926, and 6-1964.

Legislative history of Law 2-137. — See note to § 6-1901.

Habilitation plan presumed to assume up-to-date, widely accepted educational techniques. — When the habilitation plan does not specify each step to be taken toward achievement of the person's goals, except to suggest a token-economy system, it must be presumed that the plan assumes up-to-date, widely accepted educational techniques tailored to the mentally retarded. It may not be assumed that achievement of the goals of the plan by any old method, e.g. punishment, aversive stimuli, accident, will do. *Maza v. District of Columbia*, 110 WLR 2229 (Super. Ct. 1982).

Properly drawn habilitation plan must be followed. — Assuming the habilitation plan to have been properly drawn up according to this section, the plan must be followed. *Maza*

v. District of Columbia, 110 WLR 2229 (Super. Ct. 1982).

Failure to cooperate. — Trial court's finding that appellant had failed to cooperate with the District in its provision of services, and that this failure, rather than any shortcoming on the part of the District, such as a refusal to recognize his marital status, explained why the District had not placed appellant and his wife in the desired supervised apartment. *In re G.T.*, App. D.C., 611 A.2d 537 (1992).

Appellant's unwillingness to take part in the range of services that Bureau of Community Service officials determined were necessary to his habilitation defeated his motion to compel placement in a supervised apartment. *In re G.T.*, App. D.C., 611 A.2d 537 (1992).

Cited in *In re Hanna*, 111 WLR 497 (Super. Ct. 1983); *In re Williams*, App. D.C., 471 A.2d 263 (1984).

§ 6-1944. Payment for independent comprehensive evaluation and habilitation plan.

Respondents and their counsel shall be informed by the Court of the right to have an independent comprehensive evaluation and habilitation plan developed and, if unable to pay for it, as proved to the satisfaction of the Court, to

have such evaluation conducted and plan developed at the expense of the District. (1973 Ed., § 6-1671; Mar. 3, 1979, D.C. Law 2-137, § 404, 25 DCR 5094.)

Legislative history of Law 2-137. — See note to § 6-1901.

§ 6-1945. Hearing conducted promptly.

The hearing in commitment proceedings shall be conducted promptly after filing of the petition. (1973 Ed., § 6-1672; Mar. 3, 1979, D.C. Law 2-137, § 405, 25 DCR 5094.)

Legislative history of Law 2-137. — See note to § 6-1901.

§ 6-1946. Hearings conducted in informal manner; procedural rights at hearing.

Hearings shall be conducted in as informal a manner as may be consistent with orderly procedure. Individuals whose admission has been questioned or respondents have the right to be present during hearings and to testify, but shall not be compelled to testify, and shall be so advised by the Court. They shall have the right to call witnesses and present evidence, and to cross-examine opposing witnesses. The presence of the respondent may be waived only if the Court finds that the respondent has knowingly and voluntarily waived his or her right to be present, or if the Court determines that the respondent is unable to be present by virtue of his or her physically handicapping condition. (1973 Ed., § 6-1673; Mar. 3, 1979, D.C. Law 2-137, § 406, 25 DCR 5094.)

Legislative history of Law 2-137. — See note to § 6-1901.

§ 6-1947. Standard of proof.

If the petition was filed pursuant to § 6-1924, the parent or guardian, or his or her counsel if so represented, shall present evidence which shows beyond a reasonable doubt that the respondent is not competent to refuse commitment. (1973 Ed., § 6-1674; Mar. 3, 1979, D.C. Law 2-137, § 407, 25 DCR 5094.)

Legislative history of Law 2-137. — See note to § 6-1901. **Cited in** *In re Hanna*, 111 WLR 497 (Super. Ct. 1983).

§ 6-1948. Hearings closed to public; request for open hearing.

Hearings shall be closed to the public unless the mentally retarded person, or his or her counsel, requests that a hearing be open to the public. (1973 Ed., § 6-1675; Mar. 3, 1979, D.C. Law 2-137, § 408, 25 DCR 5094.)

Legislative history of Law 2-137. — See note to § 6-1901.

§ 6-1949. Disposition orders by Court.

(a) Upon completion of the hearing, the Court shall order that a respondent shall not be committed to a facility if the Court finds that:

- (1) The respondent is not at least moderately mentally retarded; or
- (2) A respondent 14 years of age or older is competent to refuse commitment.

(b) Only if the Court determines that the conditions set forth in §§ 6-1924 and 6-1926 are satisfied shall it order commitment to a facility consistent with the comprehensive evaluation and individual habilitation plan of the mentally retarded person.

(c) If the Court determines that a respondent should not be committed to a facility, the Court may order that the respondent undergo such nonresidential habilitation and care as may be appropriate and necessary, or it may order no habilitation and care.

(d) For persons whose admission to facilities has been questioned under § 6-1922, the Court shall enter an appropriate order as set forth under that section. (1973 Ed., § 6-1676; Mar. 3, 1979, D.C. Law 2-137, § 409, 25 DCR 5094.)

Temporary amendment of section. — Section 505(k) of D.C. Law 10-253 amended (a) to read as follows:

“(a) Upon completion of the hearing, the Court shall order that a respondent shall not be committed to a facility if the Court finds that:

- “(1) The respondent is not at least moderately mentally retarded;
- “(2) A respondent 14 years of age or older is competent to refuse commitment; or
- “(3) The respondent is not a resident of the District of Columbia.”

Section 1301(b) of D.C. Law 10-253 provided

that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Multiyear Budget Spending Reduction and Support Act of 1995, whichever occurs first.

Emergency act amendments. — For temporary amendment of section, see § 505(k) of the Multiyear Budget Spending Reduction and Support Emergency Act of 1994 (D.C. Act 10-389, December 29, 1994, 42 DCR 197).

Legislative history of Law 2-137. — See note to § 6-1901.

Legislative history of Law 10-253. — See note to § 6-1901.

§ 6-1950. Appeal of commitment order.

Any commitment order of the Court may be appealed in a like manner as other civil actions. (1973 Ed., § 6-1677; Mar. 3, 1979, D.C. Law 2-137, § 410, 25 DCR 5094.)

Legislative history of Law 2-137. — See note to § 6-1901.

§ 6-1951. Periodic review of commitment order.

(a) Any decision of the Court ordering commitment of a mentally retarded person to a facility shall be reviewed in a Court hearing every 6 months for 2 years, and once a year thereafter. The mentally retarded individual shall be discharged unless there is a finding of the following:

(1) The Court determines that the mentally retarded individual has benefited from the habilitation; and

(2) The facility, its sponsoring agency or the Department of Human Services demonstrates that continued residential habilitation is necessary for the habilitation program.

(b) If a mentally retarded individual is discharged in accordance with the provisions of subsection (a)(1) of this section but continues to evidence the need for habilitation and care, it shall be the responsibility of the Department of Human Services to arrange for suitable services for the person. (1973 Ed., § 6-1678; Mar. 3, 1979, D.C. Law 2-137, § 411, 25 DCR 5094.)

Temporary amendment of section. — Section 505(l) of D.C. Law 10-253 amended (a) to read as follows:

“(a) Any decision of the Court ordering commitment of a mentally retarded person to a facility shall be reviewed in a Court hearing annually. The mentally retarded individual shall be discharged unless there is a finding of the following:

“(1) The Court determines that the mentally retarded individual has benefited from the habilitation;

“(2) The facility, its sponsoring agency or the Department of Human Services demonstrates that continued residential habilitation is necessary for the habilitation program; and

“(3) The person with mental retardation is a resident of the District of Columbia.”

Section 1301(b) of D.C. Law 10-253 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Multiyear Budget Spending Reduction and Support Act of 1995, whichever occurs first.

Emergency act amendments. — For temporary amendment of section, see § 505(l) of the Multiyear Budget Spending Reduction and Support Emergency Act of 1994 (D.C. Act 10-389, December 29, 1994, 42 DCR 197).

Legislative history of Law 2-137. — See note to § 6-1901.

Legislative history of Law 10-253. — See note to § 6-1901.

References in text. — The Department of Human Resources was replaced by the Department of Human Services pursuant to Reorganization Plan No. 2 of 1979, dated February 21, 1980.

Construction of this section with § 6-1924. — This section must not be viewed in

isolation and applied to the exclusion of § 6-1924. District of Columbia Dep't of Human Servs. v. Bicksler, App. D.C., 501 A.2d 1 (1985).

Application of rights provided by chapter. — The right not to be involuntarily committed unless a court finds beyond a reasonable doubt that the individual is at least moderately mentally retarded, like all other rights provided to mentally disabled persons under this chapter, was intended to be afforded to all such persons, not just to those who were committed after the effective date of the chapter. District of Columbia Dep't of Human Servs. v. Bicksler, App. D.C., 501 A.2d 1 (1985).

Admissions occurring prior to enactment of § 6-1922 entitled to periodic review. — The admissions requirements of § 6-1922 provide a rational and comprehensible basis for excluding admissions occurring after the statute was enacted from the periodic review provisions of subsection (a) of this section, but for persons admitted before the statute was enacted, that basis does not apply, and exclusion from periodic review cannot be justified by reliance on it. In re Brooks, 111 WLR 1301 (Super. Ct. 1983).

Continued commitment of mildly mentally retarded person. — This section does not require that the commitment of a mildly mentally retarded person be continued, based on her benefit from habilitation and continued need for residential habilitation, since § 6-1924 mandates that she be discharged from her commitment because she is not at least moderately mentally retarded. District of Columbia Dep't of Human Servs. v. Bicksler, App. D.C., 501 A.2d 1 (1985).

§ 6-1952. Payment of costs and expenses.

Costs and expenses of all proceedings held under this chapter shall be paid as follows:

(1) To expert witnesses designated by the Court, an amount determined by the Court;

(2) To attorneys appointed under this chapter, fees as authorized under the Criminal Justice Act (D.C. Code, § 11-2601 et seq.);

(3) To other witnesses, the same fees and mileage as for attendance at Court to be paid upon the approval of the Court. (1973 Ed., § 6-1679; Mar. 3, 1979, D.C. Law 2-137, § 412, 25 DCR 5094.)

Legislative history of Law 2-137. — See note to § 6-1901.

attorney's fees under this section. — See *Maza v. District of Columbia*, 110 WLR 2229 (Super. Ct. 1982).

Factors to be considered in award of

§ 6-1953. Mental retardation advocate.

(a) Mentally retarded persons who admit themselves to a facility under § 6-1922, and mentally retarded persons whose commitment is sought under § 6-1924 or § 6-1926, shall have the assistance of a mental retardation advocate in every proceeding and at each stage in such proceedings under this chapter.

(b) Upon receipt of the petition for commitment or notification of admission as provided in §§ 6-1922, 6-1924 and 6-1926, the Court shall appoint a qualified mental retardation advocate selected from a list of such advocates it maintains.

(c) Mental retardation advocates shall have the following powers and duties:

(1) To inform persons subject to the procedures set forth in this chapter of their rights;

(2) To consult with the person, his or her family and others concerned with his or her habilitation and well being;

(3) To ensure by all means, including case referral to legal services, agencies and other practicing lawyers, that the person is afforded all rights under the law; and

(4) To guide and assist the person in such a manner as to encourage self-reliance and enable the person to participate to the greatest extent possible in decisions concerning his or her habilitation plan, and the services to be provided under this plan.

(d) The mental retardation advocate shall receive notice and shall have the right to participate in all meetings, conferences or other proceedings relating to any matter affecting provision of services to the person including, but not limited to, comprehensive evaluation, habilitation plan, petition and hearings for commitment and for periodic review of the commitment.

(e) The mental retardation advocate shall have access to all records, reports and documents affecting his or her client.

(f) The mental retardation advocate shall have access to all personnel and facilities responsible for providing care or services to his or her client and shall be permitted to visit and communicate with his or her client in private, and at any reasonable time without prior notice: Provided, that he or she shows reasonable cause for visiting at times other than visiting hours.

(g) The mental retardation advocate shall be a person with training and experience in the field of mental retardation.

(h) Advocates shall be provided directly by the Court or by a contract with individuals or organizations including local associations for consumers of mental retardation services; however, the Court shall ensure that contracts and other arrangements for selection and provision of advocates provide that each mental retardation advocate shall be independent of any public or private agency which provides services to persons subject to this chapter.

(i) In the selection, training and development of the advocacy provision of this section, the Court shall explore and seek out potential sources of funding at the federal and District levels.

(j) Advocates shall be provided with facilities, supplies, and secretarial and other support services sufficient to enable them to carry out their duties under this chapter.

(k) All communication between advocates and their clients shall remain confidential and privileged as if between attorney and client.

(l) The Court shall promulgate such rules amplifying and clarifying this section as it deems necessary.

(m) Mentally retarded persons subject to this chapter may knowingly reject the services of a mental retardation advocate and shall be so advised by the Court. Advocates whose services have been rejected by the mentally retarded person shall not have the rights set forth in subsections (c), (d), (e), (f) and (j) of this section. (1973 Ed., § 6-1680; Mar. 3, 1979, D.C. Law 2-137, § 413, 25 DCR 5094.)

Cross references. — As to report of adult abuse or neglect, see § 6-2503.

Section references. — This section is referred to in § 6-1902.

Legislative history of Law 2-137. — See note to § 6-1901.

Cited in Maza v. District of Columbia, 110 WLR 2229 (Super. Ct. 1982).

Subchapter V. Rights of Mentally Retarded Persons.

§ 6-1961. Habilitation and care; habilitation program.

(a) All mentally retarded persons have a right to habilitation and care suited to their needs, regardless of age, degree of retardation or handicapping condition.

(b) Each resident has a right to a habilitation program which will maximize his or her human abilities, enhance his or her ability to cope with his or her environment and create a reasonable opportunity for progress toward the goal of independent community living. (1973 Ed., § 6-1681; Mar. 3, 1979, D.C. Law 2-137, § 501, 25 DCR 5094.)

Temporary amendment of section. — Section 505(m) of D.C. Law 10-253 amended this section to read as follows:

“(a) Each person with mental retardation who is a resident of the District of Columbia has a right to habilitation and care suited to the resident’s needs, regardless of age, degree of retardation, or disabling condition.

“(b) Each customer has a right to a habilitation program which will maximize his or her

human abilities, enhance his or her ability to cope with his or her environment and create a reasonable opportunity for progress toward the goal of independent community living.”

Section 1301(b) of D.C. Law 10-253 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Multiyear Budget Spending Reduction and Support Act of 1995, whichever occurs first.

Emergency act amendments. — For tem-

porary amendment of section, see § 505(m) of the Multiyear Budget Spending Reduction and Support Emergency Act of 1994 (D.C. Act 10-389, December 29, 1994, 42 DCR 197).

Legislative history of Law 2-137. — See note to § 6-1901.

Legislative history of Law 10-253. — See note to § 6-1901.

Denial of suitable habilitation program triggers remedy in § 6-1973(b). — The rights to a habilitation program suited to their needs for all mentally retarded residents is guaranteed by this section, and when denied, triggers the remedy in § 6-1973(b). *Maza v. District of Columbia*, 110 WLR 2229 (Super. Ct. 1982).

Failure to cooperate. — Trial court's finding that appellant had failed to cooperate with the District in its provision of services, and that this failure, rather than any shortcoming on the part of the District, such as a refusal to recognize his marital status, explained why the District had not placed appellant and his wife in the desired supervised apartment. *In re G.T.*, App. D.C., 611 A.2d 537 (1992).

Appellant's unwillingness to take part in the range of services that Bureau of Community Service officials determined were necessary to his habilitation defeated his motion to compel placement in a supervised apartment. *In re G.T.*, App. D.C., 611 A.2d 537 (1992).

§ 6-1962. Living conditions; teaching of skills.

Residents shall be provided with the least restrictive and most normal living conditions possible. This standard shall apply to dress, grooming, movement, use of free time, and contact and communication with the community, including access to services outside of the institution or residential facility. Residents shall be taught skills that help them learn how to effectively utilize their environment and how to make choices necessary for daily living. (1973 Ed., § 6-1682; Mar. 3, 1979, D.C. Law 2-137, § 502, 25 DCR 5094.)

Temporary amendment of section. — Section 505(n) of D.C. Law 10-253 amended this section to read as follows:

"Customers shall be provided with the least restrictive and most normal living conditions possible. This standard shall apply to dress, grooming, movement, use of free time, and contact and communication with the community, including access to services outside of the institution or residential facility. Customers shall be taught skills that help them learn how to effectively utilize their environment and how to make choices necessary for daily living."

Section 1301(b) of D.C. Law 10-253 provided

that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Multiyear Budget Spending Reduction and Support Act of 1995, whichever occurs first.

Emergency act amendments. — For temporary amendment of section, see § 505(n) of the Multiyear Budget Spending Reduction and Support Emergency Act of 1994 (D.C. Act 10-389, December 29, 1994, 42 DCR 197).

Legislative history of Law 2-137. — See note to § 6-1901.

Legislative history of Law 10-253. — See note to § 6-1901.

§ 6-1963. Least restrictive conditions.

Residents shall have a right to the least restrictive conditions necessary to achieve the purposes of habilitation. To this end, the institution or residential facility shall move residents from: (1) More to less structured living; (2) larger to smaller facilities; (3) larger to smaller living units; (4) group to individual residence; (5) segregated to integrated community living; or (6) dependent to independent living. If at any time the Director decides that a resident should be transferred out of the facility to a less restrictive environment, he or she shall immediately notify the Court pursuant to § 6-1929. Notice shall be provided to the resident, the resident's counsel, the resident's mental retardation advocate, if one has been appointed, and the resident's parent or guardian who petitioned for the commitment. (1973 Ed., § 6-1683; Mar. 3, 1979, D.C. Law 2-137, § 503, 25 DCR 5094.)

Temporary amendment of section. — Section 505(o) of D.C. Law 10-253 amended this section to read as follows:

“Customers shall have a right to the least restrictive conditions necessary to achieve the purposes of habilitation. To this end, the institution or residential facility shall move customers from: (1) More to less structured living; (2) larger to smaller facilities; (3) larger to smaller living units; (4) group to individual residence; (5) segregated to integrated community living; or (6) dependent to independent living. If at any time the Director decides that a customer should be transferred out of the facility to a less restrictive environment, he or she shall immediately notify the Court pursuant to § 6-1929. Notice shall be provided to the customer, the customer’s counsel, the customer’s mental re-

tardation advocate, if one has been appointed, and the customer’s parent or guardian who petitioned for the commitment.”

Section 1301(b) of D.C. Law 10-253 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Multiyear Budget Spending Reduction and Support Act of 1995, whichever occurs first.

Emergency act amendments. — For temporary amendment of section, see § 505(o) of the Multiyear Budget Spending Reduction and Support Emergency Act of 1994 (D.C. Act 10-389, December 29, 1994, 42 DCR 197).

Legislative history of Law 2-137. — See note to § 6-1901.

Legislative history of Law 10-253. — See note to § 6-1901.

§ 6-1964. Comprehensive evaluation and individual habilitation plan.

(a) All residents committed pursuant to this chapter shall have received prior to their commitment pursuant to § 6-1943, and annually thereafter, a comprehensive evaluation and an individual habilitation plan. Residents admitted to a facility shall have, within 10 days of their admission, and annually thereafter, a comprehensive evaluation and an individual habilitation plan.

(b) Within 10 days of admission or commitment, professionals or staff members responsible for implementing or overseeing the implementation of the resident’s individual habilitation plan shall be designated by the facility, its sponsoring agency, or the Department of Human Services. Each District or other agency or service responsible for providing the habilitation indicated by the plan shall also be designated within 10 days, and implementation of the plan shall begin within 10 days. The plan shall specify the role and objectives with respect to the plan of all such agencies or services.

(c) All residents shall receive habilitation and care consistent with the habilitation plan. The Department of Human Services shall set standards for habilitation and care provided to such residents, consistent with standards set by the Accreditation Council for Services for the Mentally Retarded and Other Developmentally Disabled Persons, including staff-resident and professional-resident ratios. In the interests of continuity of care, 1 qualified mental retardation professional shall be responsible for informing the Chief Program Director, or the Director, when the resident should be released to a less restrictive setting and for continually reviewing the plan. (1973 Ed., § 6-1684; Mar. 3, 1979, D.C. Law 2-137, § 504, 25 DCR 5094.)

Section references. — This section is referred to in § 6-1972.

Temporary amendment of section. — Section 505(p) of D.C. Law 10-253 amended this section to read as follows:

“(a) Prior to each customer’s commitment pursuant to § 6-1943, the customer shall re-

ceive a comprehensive evaluation or screening and an individual habilitation plan. Within 30 days of a customer’s admission pursuant to § 6-1922, the customer shall have a comprehensive evaluation or screening and an individual habilitation plan. Annual reevaluations or screenings of the customer shall be provided as

determined by the customer's interdisciplinary team in accordance with Accreditation Council for Services for People with Developmental Disabilities Standards.

"(b) Within 10 days of a customer's commitment pursuant to § 6-1943 or within 30 days of admission pursuant to § 6-1922, the facility, the facility's sponsoring agency, or the Department of Human Services shall:

"(1) Designate each professional or staff member who is responsible for implementing or overseeing the implementation of a customer's individual habilitation plan;

"(2) Designate each District agency, private agency, or service responsible for providing the habilitation included in the plan; and

"(3) Specify the role and objectives of each District agency, private agency, or service with respect to the plan.

"(c) All customers shall receive habilitation and care consistent with the habilitation plan. The Department of Human Services shall set standards for habilitation and care provided to such customers, consistent with standards set by the Accreditation Council for Services for the Mentally Retarded and Other Developmentally Disabled Persons, including staff-customer and professional-customer ratios. In the interests of continuity of care, 1 qualified mental retarda-

tion professional shall be responsible for informing the Chief Program Director, or the Director, when the customer should be released to a less restrictive setting and for continually reviewing the plan."

Section 1301(b) of D.C. Law 10-253 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Multiyear Budget Spending Reduction and Support Act of 1995, whichever occurs first.

Emergency act amendments. — For temporary amendment of section, see § 505(p) of the Multiyear Budget Spending Reduction and Support Emergency Act of 1994 (D.C. Act 10-389, December 29, 1994, 42 DCR 197).

Legislative history of Law 2-137. — See note to § 6-1901.

Legislative history of Law 10-253. — See note to § 6-1901.

References in text. — The Department of Human Resources was replaced by the Department of Human Services pursuant to Reorganization Plan No. 2 of 1979, dated February 21, 1980.

Cited in *Maza v. District of Columbia*, 110 WLR 2229 (Super. Ct. 1982); *In re Hanna*, 111 WLR 497 (Super. Ct. 1983); *In re Brooks*, 111 WLR 1301 (Super. Ct. 1983).

§ 6-1965. Visitors; mail; access to telephones; religious practice; personal possessions; privacy; exercise; diet; medical attention; medication.

(a) Subject to restrictions by a physician for good cause, each resident has the right to receive visitors of his or her own choosing daily. Hours during which visitors may be received shall be limited only in the interest of effective treatment and the reasonable efficiency of the facility, and shall be sufficiently flexible to accommodate the individual needs of the resident and his or her visitors. Notwithstanding the above, each resident has the right to receive visits from his or her attorney, physician, psychologist, clergyman, social worker, parents or guardians, or mental retardation advocate in private at any reasonable time, irrespective of visiting hours, provided the visitor shows reasonable cause for visiting at times other than normal visiting hours.

(b) Writing material and postage stamps shall be reasonably available for the resident's use in writing letters and other communications. Reasonable assistance shall be provided for writing, addressing and posting letters and other documents upon request. The resident shall have the right to send and receive sealed and uncensored mail. The resident has the right to reasonable private access to telephones and, in case of personal emergencies when other means of communications are not satisfactory, he or she shall be afforded reasonable use of long distance calls. A resident who is unable to pay shall be furnished such writing, postage and telephone facilities without charge.

(c) Each resident shall have the right to follow or abstain from the practice of religion. The facility shall provide appropriate assistance in this connection

including reasonable accommodations for religious worship and/or transportation to nearby religious services. Residents who do not wish to participate in religious practice shall be free from pressure to do so or to accept religious beliefs.

(d) Each resident shall have the right to a humane psychological and physical environment. He or she shall be provided a comfortable bed and adequate changes of linen and reasonable storage space, including locked space, for his or her personal possessions. A record shall be kept of each resident's personal possessions. Except when curtailed for reason of safety or therapy as documented in his or her record by a physician, he or she shall be afforded reasonable privacy in his sleeping and personal hygiene practices.

(e) Each resident shall have reasonable daily opportunities for physical exercise and outdoor exercise and shall have reasonable access to recreational areas and equipment.

(f) Each resident has the right to a nourishing, well-balanced, varied and appetizing diet, and where ordered by a physician and/or nutritionist, to a special diet.

(g) Each resident shall have the right to prompt and adequate medical attention for any physical ailments and shall receive a complete physical examination upon admission and at least once a year thereafter.

(h) All residents have a right to be free from unnecessary or excessive medication. No medication shall be administered unless at the written or verbal order of a licensed physician, noted promptly in the patient's medical record and signed by the physician within 24 hours. Medication shall be administered only by a licensed physician, registered nurse or licensed practical nurse, or by a medical or nursing student under the direct supervision of a licensed physician or registered nurse, or by a Director acting upon a licensed physician's instructions. The attending physician shall review on a regular basis the drug regimen of each resident under his or her care. All prescriptions for psychotropic medications shall be written with a termination date, which shall not exceed 30 days. Medication shall not be used as a punishment, for the convenience of staff, as a substitute for programs or in quantities that interfere with the resident's habilitation program. (1973 Ed., § 6-1685; Mar. 3, 1979, D.C. Law 2-137, § 505, 25 DCR 5094.)

Temporary amendment of section. — Section 505(q) of D.C. Law 10-253 amended this section to read as follows:

"(a) Subject to restrictions by a physician for good cause, each customer has the right to receive visitors of his or her own choosing daily. Hours during which visitors may be received shall be limited only in the interest of effective treatment and the reasonable efficiency of the facility, and shall be sufficiently flexible to accommodate the individual needs of the customer and his or her visitors. Notwithstanding the above, each customer has the right to receive visits from his or her attorney, physician, psychologist, clergyman, social worker, parents or guardians, or mental retardation advocate in private at any reasonable time, irrespective of

visiting hours, provided the visitor shows reasonable cause for visiting at times other than normal visiting hours.

"(b) Writing material and postage stamps shall be reasonably available for the customer's use in writing letters and other communications. Reasonable assistance shall be provided for writing, addressing and posting letters and other documents upon request. The customer shall have the right to send and receive sealed and uncensored mail. The customer has the right to reasonable private access to telephones and, in case of personal emergencies when other means of communications are not satisfactory, he or she shall be afforded reasonable use of long distance calls. A customer who is unable to pay shall be furnished such writing,

postage and telephone facilities without charge.

"(c) Each customer shall have the right to follow or abstain from the practice of religion. The facility shall provide appropriate assistance in this connection including reasonable accommodations for religious worship and/or transportation to nearby religious services. Customers who do not wish to participate in religious practice shall be free from pressure to do so or to accept religious beliefs.

"(d) Each customer shall have the right to a humane psychological and physical environment. He or she shall be provided a comfortable bed and adequate changes of linen and reasonable storage space, including locked space, for his or her personal possessions. A record shall be kept of each customer's personal possessions. Except when curtailed for reason of safety or therapy as documented in his or her record by a physician, he or she shall be afforded reasonable privacy in his sleeping and personal hygiene practices.

"(e) Each customer shall have reasonable daily opportunities for physical exercise and outdoor exercise and shall have reasonable access to recreational areas and equipment.

"(f) Each customer has the right to a nourishing, well-balanced, varied and appetizing diet, and where ordered by a physician and/or nutritionist, to a special diet.

"(g) Each customer shall have the right to prompt and adequate medical attention for any physical ailments and shall receive a complete physical examination upon admission and at least once a year thereafter.

"(h) All customers have a right to be free from unnecessary or excessive medication. No medication shall be administered unless at the written or verbal order of a licensed physician, noted promptly in the patient's medical record and signed by the physician within 24 hours. Medication shall be administered only by a licensed physician, registered nurse or licensed practical nurse, or by a medical or nursing student under the direct supervision of a licensed physician or registered nurse, or by a Director acting upon a licensed physician's instructions. The attending physician shall review on a regular basis the drug regimen of each customer under his or her care. All prescriptions for psychotropic medications shall be written with a termination date, which shall not exceed 30 days. Medication shall not be used as a punishment, for the convenience of staff, as a substitute for programs or in quantities that interfere with the customer's habilitation program."

Section 1301(b) of D.C. Law 10-253 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Multiyear Budget Spending Reduction and Support Act of 1995, whichever occurs first.

Emergency act amendments. — For temporary amendment of section, see § 505(q) of the Multiyear Budget Spending Reduction and Support Emergency Act of 1994 (D.C. Act 10-389, December 29, 1994, 42 DCR 197).

Legislative history of Law 2-137. — See note to § 6-1901.

Legislative history of Law 10-253. — See note to § 6-1901.

§ 6-1966. Prohibited psychological therapies.

No psychosurgery, convulsive therapy, experimental treatment or behavior modifications program involving aversive stimuli or deprivation of rights set forth in this subchapter shall be administered to any resident. (1973 Ed., § 6-1686; Mar. 3, 1979, D.C. Law 2-137, § 506, 25 DCR 5094.)

Legislative history of Law 2-137. — See note to § 6-1901.

Cited in *Maza v. District of Columbia*, 110 WLR 2229 (Super. Ct. 1982).

§ 6-1967. Essential surgery in medical emergency.

If, in a medical emergency, it is the judgment of 1 licensed physician with the concurring judgment of another licensed physician that delay in obtaining consent for surgery would create a grave danger to the health of the resident, essential surgery may be administered without the consent of the resident if the necessary information is provided to the resident's parent, guardian, spouse or next of kin to enable such person to give informed, knowing and intelligent consent and such consent is given prior to the surgical procedure. In the event that there is no person who can be reasonably contacted, such surgery may be performed upon the authorization of the chief medical officer of

the facility. (1973 Ed., § 6-1687; Mar. 3, 1979, D.C. Law 2-137, § 507, 25 DCR 5094.)

Temporary amendment of section. — Section 505(r) of D.C. Law 10-253 amended this section to read as follows:

"If, in a medical emergency, it is the judgment of 1 licensed physician with the concurring judgment of another licensed physician that delay in obtaining consent for surgery would create a grave danger to the health of the customer, essential surgery may be administered without the consent of the customer if the necessary information is provided to the customer's parent, guardian, spouse or next of kin to enable such person to give informed, knowing and intelligent consent and such consent is given prior to the surgical procedure. In the event that there is no person who can be reasonably contacted, such surgery may be per-

formed upon the authorization of the chief medical officer of the facility."

Section 1301(b) of D.C. Law 10-253 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Multiyear Budget Spending Reduction and Support Act of 1995, whichever occurs first.

Emergency act amendments. — For temporary amendment of section, see § 505(r) of the Multiyear Budget Spending Reduction and Support Emergency Act of 1994 (D.C. Act 10-389, December 29, 1994, 42 DCR 197).

Legislative history of Law 2-137. — See note to § 6-1901.

Legislative history of Law 10-253. — See note to § 6-1901.

§ 6-1968. Sterilization.

No resident of a facility shall be sterilized by any employee of a facility or by any other person acting at the direction of, or under the authorization of, the Director or any other employee of a facility. (1973 Ed., § 6-1688; Mar. 3, 1979, D.C. Law 2-137, § 508, 25 DCR 5094.)

Temporary amendment of section. — Section 505(s) of D.C. Law 10-253 amended this section to read as follows:

"No customer of a facility shall be sterilized by any employee of a facility or by any other person acting at the direction of, or under the authorization of, the Director or any other employee of a facility."

Section 1301(b) of D.C. Law 10-253 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of

the Multiyear Budget Spending Reduction and Support Act of 1995, whichever occurs first.

Emergency act amendments. — For temporary amendment of section, see § 505(s) of the Multiyear Budget Spending Reduction and Support Emergency Act of 1994 (D.C. Act 10-389, December 29, 1994, 42 DCR 197).

Legislative history of Law 2-137. — See note to § 6-1901.

Legislative history of Law 10-253. — See note to § 6-1901.

§ 6-1969. Experimental research.

Residents shall have a right not to be subjected to experimental research without the express and informed consent of the resident, or if the resident cannot give informed consent, of the resident's parent or guardian. Such proposed research shall first have been reviewed and approved by the Department of Human Services before such consent shall be sought. Prior to such approval, the Department shall determine that such research complies with the principles of the statement on the use of human subjects for research of the American Association on Mental Deficiency and with the principles for research involving human subjects required by the United States Department of Health and Human Services for projects supported by that agency. (1973 Ed., § 6-1689; Mar. 3, 1979, D.C. Law 2-137, § 509, 25 DCR 5094.)

Temporary amendment of section. — Section 505(t) of D.C. Law 10-253 amended the first sentence to read as follows: "Customers shall have a right not to be subjected to experimental research without the express and informed consent of the customer, or if the customer cannot give informed consent, of the customer's parent or guardian."

Section 1301(b) of D.C. Law 10-253 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Multiyear Budget Spending Reduction and Support Act of 1995, whichever occurs first.

Emergency act amendments. — For temporary amendment of section, see § 505(t) of the Multiyear Budget Spending Reduction and

Support Emergency Act of 1994 (D.C. Act 10-389, December 29, 1994, 42 DCR 197).

Legislative history of Law 2-137. — See note to § 6-1901.

Legislative history of Law 10-253. — See note to § 6-1901.

References in text. — The Department of Human Resources was replaced by the Department of Human Services pursuant to Reorganization Plan No. 2 of 1979, dated February 21, 1980.

The Department of Health, Education and Welfare was replaced by the Department of Health and Human Services pursuant to the Act of October 17, 1979, 93 Stat. 675, Pub. L. 96-88, § 509.

§ 6-1970. Mistreatment, neglect or abuse prohibited; use of restraints; seclusion; "time-out" procedures.

(a) Mistreatment, neglect or abuse in any form of any resident shall be prohibited. The routine use of all forms of restraint shall be eliminated. Physical or chemical restraint shall be employed only when absolutely necessary to prevent a resident from seriously injuring himself or herself, or others. Restraint shall not be employed as a punishment, for the convenience of staff or as a substitute for programs. In any event, restraints may only be applied if alternative techniques have been attempted and failed (such failure to be documented in the resident's record) and only if such restraints impose the least possible restriction consistent with their purposes. Each facility shall have a written policy defining:

- (1) The use of restraints;
- (2) The professionals who may authorize such use; and
- (3) The mechanism for monitoring and controlling such use.

(b) Only professionals designated by the Director may order the use of restraints. Such orders shall be in writing and shall not be in force for over 12 hours. A resident placed in restraint shall be checked at least every 30 minutes by staff trained in the use of restraints and a written record of such checks shall be kept.

(c) Mechanical restraints shall be designed for minimum discomfort and used so as not to cause physical injury to the resident. Opportunity for motion and exercise shall be provided for a period of not less than 10 minutes during each 2 hours in which restraint is employed.

(d) Seclusion, defined as a placement of a resident alone in a locked room, shall not be employed. Legitimate "time-out" procedures may be utilized under close and direct professional supervision as a technique in behavior-shaping programs. Each facility shall have a written policy regarding "time-out" procedures.

(e) Alleged instances of mistreatment, neglect or abuse of any resident shall be reported immediately to the Director and the Director shall inform the resident's counsel, parent or guardian who petitioned for the commitment and the resident's mental retardation advocate of any such instances. There shall

be a written report that the allegation has been thoroughly and promptly investigated (with the findings stated therein). Employees of facilities who report such instances of mistreatment, neglect or abuse shall not be subjected to adverse action by the facility because of the report.

(f) A resident's counsel, parent or guardian who petitioned for commitment and a resident's mental retardation advocate shall be notified in writing whenever restraints are used and whenever an instance of mistreatment, neglect or abuse occurs. (1973 Ed., § 6-1690; Mar. 3, 1979, D.C. Law 2-137, § 510, 25 DCR 5094.)

Section references. — This section is referred to in § 6-1972.

Temporary amendment of section. — Section 505(u) of D.C. Law 10-253 amended this section to read as follows:

"(a) Mistreatment, neglect or abuse in any form of any customer shall be prohibited. The routine use of all forms of restraint shall be eliminated. Physical or chemical restraint shall be employed only when absolutely necessary to prevent a customer from seriously injuring himself or herself, or others. Restraint shall not be employed as a punishment, for the convenience of staff or as a substitute for programs. In any event, restraints may only be applied if alternative techniques have been attempted and failed (such failure to be documented in the customer's record) and only if such restraints impose the least possible restriction consistent with their purposes. Each facility shall have a written policy defining:

"(1) The use of restraints;

"(2) The professionals who may authorize such use; and

"(3) The mechanism for monitoring and controlling such use.

"(b) Only professionals designated by the Director may order the use of restraints. Such orders shall be in writing and shall not be in force for over 12 hours. A customer placed in restraint shall be checked at least every 30 minutes by staff trained in the use of restraints and a written record of such checks shall be kept.

"(c) Mechanical restraints shall be designed for minimum discomfort and used so as not to cause physical injury to the customer. Opportunity for motion and exercise shall be provided for a period of not less than 10 minutes during each 2 hours in which restraint is employed.

"(d) Seclusion, defined as a placement of a

customer alone in a locked room, shall not be employed. Legitimate "time-out" procedures may be utilized under close and direct professional supervision as a technique in behavior-shaping programs. Each facility shall have a written policy regarding "time-out" procedures.

"(e) Alleged instances of mistreatment, neglect or abuse of any customer shall be reported immediately to the Director and the Director shall inform the customer's counsel, parent or guardian who petitioned for the commitment and the customer's mental retardation advocate of any such instances. There shall be a written report that the allegation has been thoroughly and promptly investigated (with the findings stated therein). Employees of facilities who report such instances of mistreatment, neglect or abuse shall not be subjected to adverse action by the facility because of the report.

"(f) A customer's counsel, parent or guardian who petitioned for commitment and a customer's mental retardation advocate shall be notified in writing whenever restraints are used and whenever an instance of mistreatment, neglect or abuse occurs."

Section 1301(b) of D.C. Law 10-253 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Multiyear Budget Spending Reduction and Support Act of 1995, whichever occurs first.

Legislative history of Law 2-137. — See note to § 6-1901.

Legislative history of Law 10-253. — See note to § 6-1901.

Physical or chemical restraint used only as last resort. — When physical or chemical restraint is used it must only be as a last resort, never as a substitute for a training program. *Maza v. District of Columbia*, 110 WLR 2229 (Super. Ct. 1982).

§ 6-1971. Performance of labor.

(a) No resident shall be compelled to perform labor which involves the operation, support or maintenance of the facility or for which the facility is under contract with an outside organization. Privileges or release from the facility shall not be conditional upon the performance of such labor. The Mayor

shall promulgate rules and regulations governing compensation of residents who volunteer to perform such labor, which rules and regulations shall be consistent with United States Department of Labor regulations governing employment of patient workers in hospitals and institutions at subminimum wages.

(b) A resident may be required to perform habilitative tasks which do not involve the operation, support or maintenance of the facility if those tasks are an integrated part of the resident's habilitation plan and supervised by a qualified mental retardation professional designated by the Director.

(c) A resident may be required to perform tasks of a housekeeping nature for his or her own person only. (1973 Ed., § 6-1691; Mar. 3, 1979, D.C. Law 2-137, § 511, 25 DCR 5094.)

Temporary amendment of section. — Section 505(v) of D.C. Law 10-253 amended this section to read as follows:

"(a) No customer shall be compelled to perform labor which involves the operation, support or maintenance of the facility or for which the facility is under contract with an outside organization. Privileges or release from the facility shall not be conditional upon the performance of such labor. The Mayor shall promulgate rules and regulations governing compensation of customers who volunteer to perform such labor, which rules and regulations shall be consistent with United States Department of Labor regulations governing employment of patient workers in hospitals and institutions at subminimum wages.

"(b) A customer may be required to perform habilitative tasks which do not involve the operation, support or maintenance of the facility if those tasks are an integrated part of the customer's habilitation plan and supervised by

a qualified mental retardation professional designated by the Director.

"(c) A customer may be required to perform tasks of a housekeeping nature for his or her own person only."

Section 1301(b) of D.C. Law 10-253 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Multiyear Budget Spending Reduction and Support Act of 1995, whichever occurs first.

Legislative history of Law 2-137. — See note to § 6-1901.

Legislative history of Law 10-253. — See note to § 6-1901.

Collecting reimbursements from money earned. — Where work is performed by patients as part of their therapy and habilitation, and they receive payment for their work, it is not improper to collect from them money so earned and saved as partial reimbursement for costs of their maintenance at the institution. In re W.M., 112 WLR 369 (Super. Ct. 1984).

§ 6-1972. Maintenance of records; information considered privileged and confidential; access; contents.

Complete records for each resident shall be maintained and shall be readily available to professional persons and to the staff workers who are directly involved with the particular resident and to the Department of Human Services without divulging the identity of the resident. All information contained in a resident's records shall be considered privileged and confidential. The resident's parent or guardian who petitioned for the commitment, the resident's counsel, the resident's mental retardation advocate and any person properly authorized in writing by the resident, if such resident is capable of giving such authorization, shall be permitted access to the resident's records. These records shall include:

- (1) Identification data, including the resident's legal status;
- (2) The resident's history, including but not limited to:
 - (A) Family data, educational background and employment record;

(B) Prior medical history, both physical and mental, including prior institutionalization;

(3) The resident's grievances, if any;

(4) An inventory of the resident's life skills;

(5) A record of each physical examination which describes the results of the examination;

(6) A copy of the individual habilitation plan; and any modifications thereto and an appropriate summary which will guide and assist the professional and staff employees in implementing the resident's program;

(7) The findings made in periodic reviews of the habilitation plan which findings shall include an analysis of the successes and failures of the habilitation program and shall direct whatever modifications are necessary;

(8) A medication history and status;

(9) A summary of each significant contact by a professional person with a resident;

(10) A summary of the resident's response to his or her program, prepared and recorded at least monthly, by the professional person designated pursuant to § 6-1964(c) to supervise the resident's habilitation;

(11) A monthly summary of the extent and nature of the resident's work activities and the effect of such activity upon the resident's progress along the habilitation plan;

(12) A signed order by a professional person, as set forth in § 6-1970 (b), for any physical restraints;

(13) A description of any extraordinary incident or accident in the facility involving the resident, to be entered by a staff member noting personal knowledge of the incident or accident or other source of information, including any reports of investigations of resident's mistreatment;

(14) A summary of family visits and contacts;

(15) A summary of attendance and leaves from the facility; and

(16) A record of any seizures, illnesses, treatments thereof, and immunizations. (1973 Ed., § 6-1692; Mar. 3, 1979, D.C. Law 2-137, § 512, 25 DCR 5094.)

Temporary amendment of section. — Section 505(w) of D.C. Law 10-253 amended this section to read as follows:

"Complete records for each customer shall be maintained and shall be readily available to professional persons and to the staff workers who are directly involved with the particular customer and to the Department of Human Services without divulging the identity of the customer. All information contained in a customer's records shall be considered privileged and confidential. The customer's parent or guardian who petitioned for the commitment, the customer's counsel, the customer's mental retardation advocate and any person properly authorized in writing by the customer, if such customer is capable of giving such authorization, shall be permitted access to the customer's records. These records shall include:

"(1) Identification data, including the customer's legal status;

"(2) The customer's history, including but not limited to:

"(A) Family data, educational background and employment record;

"(B) Prior medical history, both physical and mental, including prior institutionalization;

"(3) The customer's grievances, if any;

"(4) An inventory of the customer's life skills;

"(5) A record of each physical examination which describes the results of the examination;

"(6) A copy of the individual habilitation plan; and any modifications thereto and an appropriate summary which will guide and assist the professional and staff employees in implementing the customer's program;

"(7) The findings made in periodic reviews of

the habilitation plan which findings shall include an analysis of the successes and failures of the habilitation program and shall direct whatever modifications are necessary;

"(8) A medication history and status;

"(9) A summary of each significant contact by a professional person with a customer;

"(10) A summary of the customer's response to his or her program, prepared and recorded at least monthly, by the professional person designated pursuant to § 6-1964(c) to supervise the customer's habilitation;

"(11) A monthly summary of the extent and nature of the customer's work activities and the effect of such activity upon the customer's progress along the habilitation plan;

"(12) A signed order by a professional person, as set forth in § 6-1970(b), for any physical restraints;

"(13) A description of any extraordinary incident or accident in the facility involving the customer, to be entered by a staff member noting personal knowledge of the incident or accident or other source of information, including any reports of investigations of customer's mistreatment;

"(14) A summary of family visits and contacts;

"(15) A summary of attendance and leaves from the facility; and

"(16) A record of any seizures, illnesses, treatments thereof, and immunizations."

Section 1301(b) of D.C. Law 10-253 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Multiyear Budget Spending Reduction and Support Act of 1995, whichever occurs first.

Legislative history of Law 2-137. — See note to § 6-1901.

Legislative history of Law 10-253. — See note to § 6-1901.

References in text. — The Department of Human Resources was replaced by the Department of Human Services pursuant to Reorganization Plan No. 2 of 1979, dated February 21, 1980.

Defendant's confrontation and due process rights compelled disclosure of portions of complainant's mental health records. — See *United States v. Wright*, 114 WLR 1205 (Super. Ct. 1986).

§ 6-1973. Initiation of action to compel rights; civil remedy; sovereign immunity barred; defense to action; payment of expenses.

(a) Any interested party shall have the right to initiate an action in the Court to compel the rights afforded mentally retarded persons under this chapter.

(b) Any resident shall have the right to a civil remedy in an amount not less than \$25 per day from the Director or the District of Columbia, separately or jointly, for each day in which said resident at a facility is not provided a program adequate for habilitation and normalization pursuant to the resident's individual habilitation plan.

(c) Sovereign immunity shall not bar an action under this section.

(d) The good faith belief that an habilitation program was professionally indicated shall be a defense to an action under subsection (b) of this section, despite the program's apparent ineffectiveness. In such circumstances, the habilitation program shall be modified to one appropriate for the resident within 5 days of a Court's decision that the program is inappropriate.

(e) Reasonable attorneys' fees and Court costs shall be available for actions brought under this section. (1973 Ed., § 6-1693; Mar. 3, 1979, D.C. Law 2-137, § 513, 25 DCR 5094.)

Cross references. — As to right to set off damages representing compensation for care and treatment, see § 3-503.

Temporary amendment of section. — Section 505(x) of D.C. Law 10-253 amended (b) and (d) to read as follows:

"(b) Any customer shall have the right to a civil remedy in an amount not less than \$25 per day from the Director or the District of Columbia, separately or jointly, for each day in which said customer at a facility is not provided a program adequate for habilitation and normal-

ization pursuant to the customer's individual habilitation plan.

"(d) The good faith belief that an habilitation program was professionally indicated shall be a defense to an action under subsection (b) of this section, despite the program's apparent ineffectiveness. In such circumstances, the habilitation program shall be modified to one appropriate for the customer within 5 days of a Court's decision that the program is inappropriate."

Section 1301(b) of D.C. Law 10-253 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Multiyear Budget Spending Reduction and Support Act of 1995, whichever occurs first.

Legislative history of Law 2-137. — See note to § 6-1901.

Legislative history of Law 10-253. — See note to § 6-1901.

Action created by this section is analogous to common law tort action. *Stone v. District of Columbia*, 110 WLR 2213 (Super. Ct. 1982).

This section does not provide for punitive damages or fine. *Maza v. District of Columbia*, 110 WLR 2229 (Super. Ct. 1982).

Denial of suitable habilitation program triggers remedy in subsection (b). — The rights to a habilitation program suited to their needs for all mentally retarded residents is

guaranteed by § 6-1961, and when denied, triggers the remedy in subsection (b) of this section. *Maza v. District of Columbia*, 110 WLR 2229 (Super. Ct. 1982).

Liability for damages not excused by failure to appropriate implementation funds. — The District should not escape liability for damages provided under this section by the expedient of failing to appropriate funds to implement this Act, the Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978. *Maza v. District of Columbia*, 110 WLR 2229 (Super. Ct. 1982).

Assessment of damages under this chapter. — Since the whole thrust of this Act, the Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978 is not to treat mentally retarded persons as less than full citizens, a court may assess damages just as it would for a normal person who was kept in a locked ward each day, treated as a pet, not given proper care for her documented needs (both physical and mental), but was fed, clothed, and sheltered. *Maza v. District of Columbia*, 110 WLR 2229 (Super. Ct. 1982).

Plaintiff entitled to jury trial upon proper demand. — Subsection (b) of this section creates legal rights and remedies of the sort traditionally enforced in an action at law and therefore a plaintiff is entitled to a jury trial upon proper demand. *Stone v. District of Columbia*, 110 WLR 2213 (Super. Ct. 1982).

§ 6-1974. Deprivation of civil rights; public or private employment; retention of rights; liability; immunity; exceptions.

(a) No person shall be deprived of any civil right, or public or private employment, solely by reason of his or her having received services, voluntarily or involuntarily, for mental retardation.

(b) Any person who has been admitted or committed to a facility under the provisions of this chapter retains all rights not specifically denied him or her under this chapter, including rights of habeas corpus.

(c) Any person who violates or abuses any rights or privileges protected by this chapter shall be liable for damages as determined by law, for Court costs and for reasonable attorneys' fees. Any person who acts in good faith compliance with the provisions of this chapter shall be immune from civil or criminal liability for actions in connection with evaluation, admission, commitment, habilitative programming, education or discharge of a resident. However, this section shall not relieve any person from liability for acts of negligence, misfeasance, nonfeasance, or malfeasance. (1973 Ed., § 6-1694; Mar. 3, 1979, D.C. Law 2-137, § 514, 25 DCR 5094.)

Cross references. — As to rights to set off damages representing compensation for care and treatment, see § 3-503.

Legislative history of Law 2-137. — See note to § 6-1901.

Cited in *Maza v. District of Columbia*, 110 WLR 2229 (Super. Ct. 1982).

Subchapter VI. Miscellaneous Provisions; Effective Date.

§ 6-1981. Increased financial responsibility.

The responsible party must be provided with notice and a reasonable opportunity for a hearing before increased financial responsibility, resulting from a change in the Court's commitment order, may be charged for the support of a mentally retarded person. (1973 Ed., § 6-1695; Mar. 3, 1979, D.C. Law 2-137, § 601, 25 DCR 5094.)

Legislative history of Law 2-137. — See note to § 6-1901.

§ 6-1982. Severability.

Should any provision of this chapter be declared to be unconstitutional or beyond the statutory authority of the Council, the remaining provisions of this chapter shall remain in effect. (1973 Ed., § 6-1696; Mar. 3, 1979, D.C. Law 2-137, § 602, 25 DCR 5094.)

Legislative history of Law 2-137. — See note to § 6-1901.

§ 6-1983. Appropriations.

There is hereby authorized to be appropriated such District funds as may be necessary to implement the provisions of this chapter, including funds for the development, and the support, of community-based services for mentally retarded persons. (1973 Ed., § 6-1697; Mar. 3, 1979, D.C. Law 2-137, § 603, 25 DCR 5094.)

Legislative history of Law 2-137. — See note to § 6-1901.

§ 6-1984. Authority of Board of Education unchanged.

Nothing herein shall be construed to extend or diminish the authority or responsibility of the D.C. Board of Education vested pursuant to Title 31 of the District of Columbia Code and applicable federal laws and regulations. (1973 Ed., § 6-1698; Mar. 3, 1979, D.C. Law 2-137, § 605, 25 DCR 5094.)

Legislative history of Law 2-137. — See note to § 6-1901.

§ 6-1985. Effective date.

This chapter shall take effect pursuant to the provisions of § 1-233(c)(1). With respect to persons who are residents in facilities on the effective date of this chapter, the provisions of the chapter will take effect immediately, with the

exception of the admission and commitment hearing procedures established in subchapters III and IV of this chapter. The Court shall begin hearings under subchapters III and IV of this chapter to review the commitment of such persons, and shall appoint appropriate officers to review the admission of such persons, as soon as possible, but not later than 180 days after the effective date of this chapter. All Court hearings to review the admission or commitment of persons residing in facilities on the effective date of this chapter shall be completed within 3 years of the effective date of this chapter. (1973 Ed. § 6-1699; Mar. 3, 1979, D.C. Law 2-137, § 696, 25 DCR 5094.)

Legislative history of Law 2-137. — See note to § 6-1901.

Admissions prior to effective date of chapter not voided. — Nothing indicates that this chapter itself voids any commitment or

admission made prior to its effective date. *Lunceford v. District of Columbia Bd. of Educ.*, 745 F.2d 1577 (D.C. Cir. 1984).

Cited in *In re Brooks*, 111 WLR 1301 (Super. Ct. 1983).

CHAPTER 20. MENTAL HEALTH INFORMATION.

Subchapter I. Definitions; General Provisions.

Sec.

6-2001. Definitions.

6-2002. Disclosures prohibited; exceptions.

6-2003. Personal notes.

6-2004. General rules governing disclosures.

Subchapter II. Disclosures With the Client's Consent.

6-2011. Disclosures by client authorization.

6-2012. Form of authorization.

6-2013. Redisclosure.

6-2014. Revocation of authorization.

6-2015. Power to grant authorization.

6-2016. Authority of mental health professional to limit authorized disclosures.

6-2017. Limited disclosure to 3rd-party payors.

Subchapter III. Exceptions.

6-2021. Disclosures within a mental health facility.

6-2022. Disclosures required by law.

6-2023. Disclosures on an emergency basis.

6-2024. Disclosures for collection of fees.

6-2025. Disclosures for research, auditing and program evaluation.

6-2026. Redisclosure.

Subchapter IV. Court-Related Disclosures.

6-2031. Court-ordered examinations.

6-2032. Civil commitment proceedings.

Sec.

6-2033. Court actions.

6-2034. Redisclosure.

6-2035. Court records; anonymity of parties.

Subchapter V. Client's Right to Access and Right to Correct Information.

6-2041. Right to access.

6-2042. Authority to limit access.

6-2043. Review by independent mental health professional.

6-2044. Judicial action to compel access.

6-2045. Right to correct information.

Subchapter VI. Security.

6-2051. Security requirement.

6-2052. Notice requirement — Employees and agents with access to information.

6-2053. Same — Clients in group sessions.

Subchapter VII. Penalties.

6-2061. Civil liability.

6-2062. Criminal penalties.

Subchapter VIII. Miscellaneous Provisions.

6-2071. Penalties under other laws.

6-2072. Prescriptions.

6-2073. Authority of the Commission on Mental Health.

6-2074. Prohibition against waiver.

6-2075. Conflict with federal law.

6-2076. Effective date.

Subchapter I. Definitions; General Provisions.

§ 6-2001. Definitions.

For purposes of this chapter:

(1) "Administrative information" means a client's name, age, sex, address, identifying number or numbers, dates and character of sessions (individual or group), and fees.

(2) "Client" means any individual who receives or has received professional services from a mental health professional in a professional capacity.

(3) "Client representative" means an individual specifically authorized by the client in writing or by the court as the legal representative of that client.

(4) "Data collector" means a person other than the client, mental health professional and mental health facility who regularly engages, in whole or in part, in the practice of assembling or evaluating client mental health information.

(5) "Diagnostic information" means a therapeutic characterization which is of the type that is found in the Diagnostic and Statistical Manual of Mental

Disorders of the American Psychiatric Association or any comparable professionally recognized diagnostic manual.

(6) "Disclose" means to communicate any information in any form (written, oral or recorded).

(7) "Group session" means the provision of professional services jointly to more than 1 client in a mental health facility.

(8) "Insurance transaction" means whenever a decision (be it adverse or otherwise) is rendered regarding an individual's eligibility for an insurance benefit or service.

(9) "Mental health information" means any written, recorded or oral information acquired by a mental health professional in attending a client in a professional capacity which:

(A) Indicates the identity of a client; and

(B) Relates to the diagnosis or treatment of a client's mental or emotional condition.

(10) "Mental health facility" means any hospital, clinic, office, nursing home, infirmary or similar entity where professional services are provided.

(11) "Mental health professional" means any of the following persons engaged in the provision of professional services:

(A) A person licensed to practice medicine;

(B) A person licensed to practice psychology;

(C) A licensed social worker;

(D) A professional marriage, family, or child counselor;

(E) A rape crisis or sexual abuse counselor who has undergone at least 40 hours of training and is under the supervision of a licensed social worker, nurse, psychiatrist, psychologist, or psychotherapist;

(F) A licensed nurse who is a professional psychiatric nurse; or

(G) Any person reasonably believed by the client to be a mental health professional within the meaning of subparagraphs (A) through (F) of this paragraph.

(12) "Person" means any governmental organization or agency or part thereof, individual, firm, partnership, copartnership, association or corporation.

(13) "Personal notes" means mental health information regarding a client which is limited to:

(A) Mental health information disclosed to the mental health professional in confidence by other persons on condition that such information not be disclosed to the client or other persons; and

(B) The mental health professional's speculations.

(14) "Professional services" means any form of diagnosis or treatment relating to a mental or emotional condition that is provided by a mental health professional.

(15) "Third-party payor" means any person who provides accident and sickness benefits or medical, surgical or hospital benefits whether on an indemnity, reimbursement, service or prepaid basis, including, but not limited to, insurance carriers, governmental agencies and employers. (1973 Ed., § 6-1611; Mar. 3, 1979, D.C. Law 2-136, § 101, 25 DCR 5055; Mar. 25, 1986,

D.C. Law 6-99, § 1101(b), 33 DCR 729; Feb. 24, 1987, D.C. Law 6-174, § 2(a), 33 DCR 7228; July 22, 1992, D.C. Law 9-126, § 3, 39 DCR 3824; _____, 1995, D.C. Law 10- (Act 10-385), § 401(a), 42 DCR 53.)

Section references. — This section is referred to in §§ 12-301, 14-307, and 21-2047.

Effect of amendments. — D.C. Law 9-126 inserted (E-1); and in (F) substituted “subparagraphs (A) through (E-1)” for “subparagraphs (A) through (E)”.

D.C. Law 10- (Act 10-385), in (11), inserted present (E), deleted former (E-1), and redesignated former (E) and (F) as (F) and (G), respectively.

Legislative history of Law 2-136. — Law 2-136, the “District of Columbia Mental Health Information Act of 1978,” was introduced in Council and assigned Bill No. 2-144, which was referred to the Committee on the Judiciary. The Bill was adopted on first, amended first, second amended first, and second readings on July 11, 1978, July 25, 1978, September 19, 1978 and October 3, 1978, respectively. Signed by the Mayor on November 1, 1978, it was assigned Act No. 2-292 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-99. — Law 6-99, the “District of Columbia Health Occupations Revision Act of 1985,” was introduced in Council and assigned Bill No. 6-317, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 17, 1985, and January 14, 1986, respectively. Signed by the Mayor on January 28, 1986, it was assigned Act No. 6-127 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-174. — Law 6-174, the “D.C. Mental Health Information Act of 1978 Temporary Amendment Act of 1986,”

was introduced in Council and assigned Bill No. 6-539. The Bill was adopted on first and second readings on October 7, 1986 and October 21, 1986, respectively. Signed by the Mayor on October 30, 1986, it was assigned Act No. 6-223 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-126. — Law 9-126, the “District of Columbia Health Occupations Revision Act of 1985 Professional Counselors Amendment Act of 1992,” was introduced in Council and assigned Bill No. 9-197, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on April 7, 1992, and May 6, 1992, respectively. Signed by the Mayor on May 28, 1992, it was assigned Act No. 9-210 and transmitted to both Houses of Congress for its review. D.C. Law 9-126 became effective on July 22, 1992.

Legislative history of Law 10- (Act 10-385). — Law 10- (Act 10-385), the “Anti-Sexual Abuse Act of 1994,” was introduced in Council and assigned Bill No. 10-87, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 28, 1994, it was assigned Act No. 10-385 and transmitted to both Houses of Congress for its review. D.C. Law 10- (Act 10-385) is projected to become law on May 19, 1995.

Cited in Doe v. DiGenova, 779 F.2d 74 (D.C. Cir. 1985); In re T.M., 120 WLR 2541 (Super. Ct. 1992).

§ 6-2002. Disclosures prohibited; exceptions.

(a) Except as specifically authorized by subchapter II, III, or IV of this chapter, no mental health professional, mental health facility, data collector or employee or agent of a mental health professional, mental health facility or data collector shall disclose or permit the disclosure of mental health information to any person, including an employer.

(b) Except as specifically authorized by subchapter II or IV of this chapter, no client in a group session shall disclose or permit the disclosure of mental health information relating to another client in the group session to any person.

(c) No violation of subsection (a) or (b) of this section occurs until a single act or series of acts taken together amount to a disclosure of mental health information. (1973 Ed., § 6-1612; Mar. 3, 1979, D.C. Law 2-136, § 102, 25 DCR 5055.)

Legislative history of Law 2-136. — See note to § 6-2001.

Individual's interests. — The individual's interest under this section is not absolute, and may have to yield where the right of the defense to cross-examine a witness in a criminal case must be accorded protection. *Jackson v. United States*, App. D.C., 623 A.2d 571, cert. denied, — U.S. —, 114 S. Ct. 649, 126 L. Ed. 2d 607 (1993).

Societal interests. — The issue of what mental health records should be made available to the defense pits two strong societal interests against each other. One is the interest in insuring that those accused of criminal acts receive a fair trial, while the other is the interest in insuring that persons with mental health problems can seek treatment without fear of disclosure of statements made during the course of that treatment. In re T.M., 120 WLR 2541 (Super. Ct. 1992).

Veterans' Administration records. — Exclusive federal regulation of disclosure of veteran's medical records by the Veterans' Records Statute preempts any state or D.C. regulation of such activity and does not encroach upon an area of traditional state regulation. *John Doe v. DiGenova*, 642 F. Supp. 624 (D.D.C. 1986), modified, 851 F.2d 1457 (D.C. Cir. 1988).

Insofar as this act purports to regulate the disclosure rules governing information held by the Veterans' Administration, it is squarely preempted by the federal Veterans' Records Statute, an enactment which plainly was designed to occupy the field of rules governing disclosure of veterans' records. *Doe v. Stephens*, 851 F.2d 1457 (D.C. Cir. 1988).

The District of Columbia Mental Health Information Act, D.C. Code §§ 6-2001 to 6-2062, either independently, or in conjunction with § 14-307, does not extend the scope of the

physician-patient privilege so as to bar the disclosure of patient's records by the Veterans' Administration. *Doe v. Stephens*, 851 F.2d 1457 (D.C. Cir. 1988).

Psychological reports. — Public disclosure of psychological reports forwarded to the Board of Parole by the Department of Corrections is prohibited under the District of Columbia Mental Health Information Act. *Hines v. District of Columbia Bd. of Parole*, App. D.C., 567 A.2d 909 (1989).

Child neglect proceedings. — The absence of a statutory physician-patient privilege in child neglect proceedings, as a result of the exception created by § 2-1355, does not significantly or impermissibly infringe on any privacy right that a parent may have regarding medical information. *N.H. v. District of Columbia*, App. D.C., 569 A.2d 1179 (1990).

Rape crisis center records. — Where the complainant sought counseling at a rape crisis center not as a result of a generalized mental health problem, but rather specifically in connection with the incident which formed the basis for the petition, if the records of her statements to the center about the incident, as well as her sexual history, were subject to disclosure, there could be little doubt that her willingness to seek help from the mental health professionals at the center in the future would have been chilled, and that others who have been the victims of sexual offenses would be hesitant to go to the center for help. In re T.M., 120 WLR 2541 (Super. Ct. 1992).

Cited in *Doe v. Harris*, 696 F.2d 109 (D.C. Cir. 1982); *Doe v. DiGenova*, 779 F.2d 74 (D.C. Cir. 1985); *Vassiliades v. Garfinckel's*, App. D.C., 492 A.2d 580 (1985); In re O.L., App. D.C., 584 A.2d 1230 (1990).

§ 6-2003. Personal notes.

If a mental health professional makes personal notes regarding a client, such personal notes shall not be maintained as a part of the client's record of mental health information. Notwithstanding any other provision of this chapter, access to such personal notes shall be strictly and absolutely limited to the mental health professional and shall not be disclosed except to the degree that the personal notes or the information contained therein are needed in litigation brought by the client against the mental health professional on the grounds of professional malpractice or disclosure in violation of this section. (1973 Ed., § 6-1613; Mar. 3, 1979, D.C. Law 2-136, § 103, 25 DCR 5055.)

Section references. — This section is referred to in § 6-2041.

Legislative history of Law 2-136. — See note to § 6-2001.

§ 6-2004. General rules governing disclosures.

(a) Upon disclosure of any of the client's mental health information pursuant to subchapter II, III, or IV of this chapter, a notation shall be entered and maintained with the client's record of mental health information which includes:

- (1) The date of the disclosure;
- (2) The name of the recipient of the mental health information; and
- (3) A description of the contents of the disclosure.

(b) All disclosures of mental health information, except on an emergency basis as provided in § 6-2023, shall be accompanied by a statement to the effect that: The unauthorized disclosure of mental health information violates the provisions of the District of Columbia Mental Health Information Act of 1978 (§§ 6-2001 to 6-2062). Disclosures may only be made pursuant to a valid authorization by the client or as provided in Title III or IV of that Act. The Act provides for civil damages and criminal penalties for violations. (1973 Ed., § 6-1614; Mar. 3, 1979, D.C. Law 2-136, § 104, 25 DCR 5055.)

Legislative history of Law 2-136. — See note to § 6-2001.

Subchapter II. Disclosures With the Client's Consent.

§ 6-2011. Disclosures by client authorization.

Except as provided in § 6-2016, a mental health professional, mental health facility, data collector or employee or agent of a mental health professional, mental health facility or data collector shall disclose mental health information and a client in a group session may disclose mental health information upon the voluntary written authorization of the person or persons who have the power to authorize disclosure under § 6-2015. (1973 Ed., § 6-1615; Mar. 3, 1979, D.C. Law 2-136, § 201, DCR 5055.)

Section references. — This section is referred to in §§ 6-2012 and 6-2013.

Legislative history of Law 2-136. — See note to § 6-2001.

Cited in *Brown v. United States*, App. D.C., 567 A.2d 426 (1989), cert. denied, 494 U.S. 1037, 110 S. Ct. 1497, 108 L. Ed. 2d 632 (1990).

§ 6-2012. Form of authorization.

(a) Any written authorization which authorizes disclosure pursuant to § 6-2011 shall:

(1) Specify the nature of the information to be disclosed, the type of persons authorized to disclose such information, to whom the information may be disclosed and the specific purposes for which the information may be used both at the time of the disclosure and at any time in the future;

(2) Advise the client of his right to inspect his record of mental health information;

(3) State that the consent is subject to revocation, except where an authorization is executed in connection with a client's obtaining a life or

noncancellable or guaranteed renewable health insurance policy, in which case the authorization shall be specific as to its expiration date which shall not exceed 2 years from the date of the policy; or where an authorization is executed in connection with the client's obtaining any other form of health insurance in which case the authorization shall be specific as to its expiration date which shall not exceed 1 year from the date of the policy;

(4) Be signed by the person or persons authorizing the disclosure; and

(5) Contain the date upon which the authorization was signed.

(b) Any authorization executed pursuant to subsection (a) of this section shall apply only to the disclosure of mental health information which exists as of the date of the authorization.

(c) A copy of such authorization shall:

(1) Be provided to the client and the person authorizing the disclosure;

(2) Accompany all such disclosures; and

(3) Be included in the client's record of mental health information. (1973 Ed., § 6-1616; Mar. 3, 1979, D.C. Law 2-136, § 202, 25 DCR 5055.)

Section references. — This section is referred to in § 6-2014.

Legislative history of Law 2-136. — See note to § 6-2001.

§ 6-2013. Redisclosure.

Mental health information disclosed pursuant to this subchapter cannot be further disclosed by the recipient without authorization as provided in § 6-2011. (1973 Ed., § 6-1617; Mar. 3, 1979, D.C. Law 2-136, § 203, 25 DCR 5055.)

Legislative history of Law 2-136. — See note to § 6-2001.

§ 6-2014. Revocation of authorization.

Except as provided in § 6-2012(a)(3), the person or persons who authorize a disclosure may revoke an authorization by providing a written revocation to the recipient named in the authorization and to the mental health professional, mental health facility or data collector authorized to disclose mental health information. The revocation of authorization shall be effective upon receipt. After the effective revocation date, no mental health information may be disclosed pursuant to the authorization. However, mental health information previously disclosed may be used for the purposes stated in the written authorization. (1973 Ed., § 6-1618; Mar. 3, 1979, D.C. Law 2-136, § 204, 25 DCR 5055.)

Legislative history of Law 2-136. — See note to § 6-2001.

§ 6-2015. Power to grant authorization.

(a) When a client is 18 years of age or over, the client or client representative shall have the power to authorize disclosures.

(b) When a client is under the age of 18, but beyond the age of 14, disclosures which require authorization may only be authorized by the joint written authorization of the client and the client's parent or legal guardian. When a client is less than 14 years of age, disclosures which require authorization may only be authorized by the client's parent or legal guardian. However, if the client's parent or legal guardian has not expressed consent to the mental health professional regarding the client's receipt of professional services, the client may, by written authorization, consent without any authorization from his parent or legal guardian. (1973 Ed., § 6-1619; Mar. 3, 1979, D.C. Law 2-136, § 205, 25 DCR 5055.)

Section references. — This section is referred to in § 6-2011.

Legislative history of Law 2-136. — See note to § 6-2001.

§ 6-2016. Authority of mental health professional to limit authorized disclosures.

(a) The mental health professional primarily responsible for the diagnosis or treatment of a client may refuse to disclose or limit disclosure of the client's mental health information even though such mental health information is disclosable by virtue of a valid authorization: Provided, that:

(1) Such mental health professional reasonably believes that such refusal or limitation on disclosure is necessary to protect the client from a substantial risk of imminent psychological impairment or to protect the client or another individual from a substantial risk of imminent and serious physical injury; and

(2) The mental health professional notifies the person or persons who authorized the disclosure, in writing, of: (A) the refusal or limitation on disclosure; (B) the reasons for such refusal or limitation; and (C) the remedies under this chapter: Provided, further, that, in an insurance transaction, the mental health professional shall inform the insurer that the authorized disclosure was refused or limited.

(b) In the event the disclosure is limited by the mental health professional pursuant to subsection (a) of this section, the person or persons who authorized the disclosure may designate an independent mental health professional who shall be in substantially the same or greater professional class as the mental health professional who initially limited disclosure and who shall be permitted to review the client's record of mental health information. The independent mental health professional may authorize disclosure in whole or in part if, after a complete review of the client's record of mental health information, the independent mental health professional determines that the disclosure does not pose to the client a substantial risk of imminent psychological impairment or pose a substantial risk of imminent and serious physical injury to the client or another individual.

(c) A person who has taken action to achieve disclosure in accordance with subsection (b) of this section may institute an action in the Superior Court of the District of Columbia to compel the disclosure of all or any part of the record of the client's mental health information which was not disclosed by the mental health professionals. An action instituted under this subsection shall be

brought within 6 months of the denial, in whole or in part, of the disclosure by the independent mental health professional or the denial, in whole or in part, of disclosure to the independent mental health professional by the mental health professional. In the event that a person is indigent and is unable to obtain the services of an independent mental health professional, he may institute an action in the Superior Court of the District of Columbia, without regard to the provisions of subsection (b) of this section: Provided, that the action is brought within 6 months of the denial, in whole or in part, of the disclosure by the mental health professional. If the person who instituted the action establishes that he executed a valid authorization which was transmitted to the mental health professional prior to the denial of disclosure by such mental health professional, the burden of proof shall then be placed upon the mental health professional to establish, by a preponderance of the evidence, that the denial of disclosure was in conformity with paragraphs (1) and (2) of subsection (a) of this section.

(d) Any refusal or limitation on disclosure shall be noted in the client's record of mental health information including, but not limited to, the names of the mental health professionals involved, the date of the refusal or limitation, the requested disclosure and the actual disclosure, if any.

(e) This section shall not apply to disclosures under § 21-562 (concerning the disclosure of records of a client hospitalized in a public hospital for a mental illness) or court-related disclosures under subchapter IV of this chapter. (1973 Ed., § 6-1620; Mar. 3, 1979, D.C. Law 2-136, § 206, 25 DCR 5055.)

Section references. — This section is referred to in § 6-2011.

Legislative history of Law 2-136. — See note to § 6-2001.

§ 6-2017. Limited disclosure to 3rd-party payors.

(a) A mental health professional or mental health facility may disclose to a 3rd-party payor mental health information necessary to determine the client's entitlement to, or the amount of, payment benefits for professional services rendered: Provided, that the disclosure is pursuant to a valid authorization and that the information to be disclosed is limited to:

- (1) Administrative information;
- (2) Diagnostic information;
- (3) The status of the client (voluntary or involuntary);
- (4) The reason for admission or continuing treatment; and
- (5) A prognosis limited to the estimated time during which treatment might continue.

(b) In the event the 3rd-party payor questions the client's entitlement to or the amount of payment benefits following disclosure under subsection (a) of this section, the 3rd-party payor may, pursuant to a valid authorization, request an independent review of the client's record of mental health information by a mental health professional or professionals. Mental health information disclosed for the purpose of review shall not be disclosed to the 3rd-party

payor. (1973 Ed., § 6-1621; Mar. 3, 1979, D.C. Law 2-136, § 207, 25 DCR 5055.)

Legislative history of Law 2-136. — See note to § 6-2001.

Conflicts between this section and federal Employees Health Benefits Act controlled by federal law. — Where the provisions of this section conflict with 5 U.S.C.

§§ 8901-8914, the federal Employees Health Benefits Act, § 6-2075 expressly provides that the federal law will be supreme. *District of Columbia Inst. of Mental Hygiene v. Medical Serv.*, App. D.C., 474 A.2d 831 (1984).

Subchapter III. Exceptions.

§ 6-2021. Disclosures within a mental health facility.

Mental health information may be disclosed to other individuals employed at the individual mental health facility when and to the extent necessary to facilitate the delivery of professional services to the client. (1973 Ed., § 6-1622; Mar. 3, 1979, D.C. Law 2-136, § 301, 25 DCR 5055.)

Legislative history of Law 2-136. — See note to § 6-2001.

§ 6-2022. Disclosures required by law.

Mental health information may be disclosed by a mental health professional or mental health facility where necessary and, to the extent necessary, to meet the requirements of § 21-586 (concerning financial responsibility for the care of hospitalized persons) or to meet the compulsory reporting provisions of District or federal law which attempt to promote human health and safety. (1973 Ed., § 6-1623; Mar. 3, 1979, D.C. Law 2-136, § 302, 25 DCR 5055.)

Legislative history of Law 2-136. — See note to § 6-2001.

§ 6-2023. Disclosures on an emergency basis.

(a) Mental health information may be disclosed, on an emergency basis, to 1 or more of the following: The client's spouse, parent, legal guardian, a duly accredited officer or agent of the District of Columbia in charge of public health, an officer authorized to make arrests in the District of Columbia or an intended victim if the mental health professional reasonably believes that such disclosure is necessary to initiate or seek emergency hospitalization of the client under § 21-521 or to otherwise protect the client or another individual from a substantial risk of imminent and serious physical injury.

(b) Mental health information disclosed to the Metropolitan Police Department pursuant to this section shall be maintained separately and shall not be made a part of any permanent police record. Such mental health information shall not be further disclosed except as a court-related disclosure pursuant to subchapter IV of this chapter. If no judicial action relating to the disclosure under this section is pending at the expiration of the statute of limitations governing the nature of the judicial action, the mental health information shall

be destroyed. If a judicial action relating to the disclosure under this section is pending at the expiration of the statute of limitations, the mental health information shall be destroyed at the termination of the judicial action. (1973 Ed., § 6-1624; Mar. 3, 1979, D.C. Law 2-136, § 303, 25 DCR 5055.)

Section references. — This section is referred to in § 6-2004.

Legislative history of Law 2-136. — See note to § 6-2001.

§ 6-2024. Disclosures for collection of fees.

(a) A mental health professional or mental health facility may disclose the administrative information necessary for the collection of his or its fee from the client to a person authorized by the mental health professional or mental health facility for the collection of a fee from such client if the client or client representative has received a written notification that the fee is due and has failed to arrange for payment with the mental health professional or mental health facility within a reasonable time after such notification.

(b) In the event of a claim in any civil action for the collection of such a fee, no additional mental health information shall be disclosed in litigation, except to the extent necessary:

(1) To respond to a motion of the client or client representative for greater specificity; or

(2) To dispute a defense or counterclaim. (1973 Ed., § 6-1625; Mar. 3, 1979, D.C. Law 2-136, § 304, 25 DCR 5055.)

Legislative history of Law 2-136. — See note to § 6-2001.

§ 6-2025. Disclosures for research, auditing and program evaluation.

A mental health professional or mental health facility may disclose mental health information to qualified personnel, if necessary, for the purpose of conducting scientific research or management audits, financial audits or program evaluation of the mental health professional or mental health facility: Provided, that such personnel have demonstrated and provided assurances, in writing, of their ability to insure compliance with the requirements of this chapter. Such personnel shall not identify, directly or indirectly, an individual client in any reports of such research, audit or evaluation, or otherwise disclose client identities in any manner. (1973 Ed., § 6-1626; Mar. 3, 1979, D.C. Law 2-136, § 305, 25 DCR 5055.)

Legislative history of Law 2-136. — See note to § 6-2001.

§ 6-2026. Redisclosure.

Mental health information disclosed pursuant to this subchapter shall not be redisclosed except as specifically authorized by subchapter II, III or IV of this

chapter. (1973 Ed., § 6-1627; Mar. 3, 1979, D.C. Law 2-136, § 306, 25 DCR 5055.)

Legislative history of Law 2-136. — See note to § 6-2001.

Cited in *Hines v. District of Columbia Bd. of Parole*, App. D.C., 567 A.2d 909 (1989).

Subchapter IV. Court-Related Disclosures.

§ 6-2031. Court-ordered examinations.

Except as provided elsewhere by law, mental health information acquired by a mental health professional pursuant to a court-ordered examination may be disclosed in a manner provided by rules of court. (1973 Ed., § 6-1628; Mar. 3, 1979, D.C. Law 2-136, § 401, 25 DCR 5055.)

Legislative history of Law 2-136. — See note to § 6-2001.

Cited in *D.C.*, 569 A.2d 1179 (1990); *Jackson v. United States*, App. D.C., 623 A.2d 571, cert. denied, — U.S. —, 114 S. Ct. 649, 126 L. Ed. 2d 607 (1993).

§ 6-2032. Civil commitment proceedings.

Mental health information may be disclosed by a mental health professional when and to the extent necessary to initiate or seek civil commitment proceedings under § 21-541. (1973 Ed., § 6-1629; Mar. 3, 1979, D.C. Law 2-136, § 402, 25 DCR 5055.)

Legislative history of Law 2-136. — See note to § 6-2001.

Cited in *Jackson v. United States*, App. D.C., 623 A.2d 571, cert. denied, — U.S. —, 114 S. Ct. 649, 126 L. Ed. 2d 607 (1993).

§ 6-2033. Court actions.

Mental health information may be disclosed in a civil or administrative proceeding in which the client or the client representative or, in the case of a deceased client, any party claiming or defending through or a beneficiary of the client, initiates his mental or emotional condition or any aspect thereof as an element of the claim or defense. (1973 Ed., § 6-1630; Mar. 3, 1979, D.C. Law 2-136, § 403, 25 DCR 5055.)

Legislative history of Law 2-136. — See note to § 6-2001.

Cited in *Jackson v. United States*, App. D.C., 623 A.2d 571, cert. denied, — U.S. —, 114 S. Ct. 649, 126 L. Ed. 2d 607 (1993).

§ 6-2034. Redisclosure.

Redisclosure of any mental health information disclosed pursuant to this subchapter shall be governed by order of the court or, if no order is issued, by the rules of the Superior Court of the District of Columbia. (1973 Ed., § 6-1631; Mar. 3, 1979, D.C. Law 2-136, § 404, 25 DCR 5055.)

Legislative history of Law 2-136. — See note to § 6-2001.

§ 6-2035. Court records; anonymity of parties.

A client, client representative or any other party in a civil, criminal or administrative action, in which mental health information has been or will be disclosed, shall have the right to move the court to denominate, style or caption the names of all parties as “John Doe” or otherwise protect the anonymity of all of the parties. (1973 Ed., § 6-1632; Mar. 3, 1979, D.C. Law 2-136, § 405, 25 DCR 5055.)

Legislative history of Law 2-136. — See note to § 6-2001.

Mental Health Information Act inapplicable to operations of Commission on Mental Health. — The operations of the Commission of Mental Health are involved, as a

preliminary but necessary phase, of any mental health case pending in the Superior Court and it follows that, pursuant to § 6-2073, the provisions of the Mental Health Information Act are inapplicable. In re Watts, 110 WLR 2581 (Super. Ct. 1982).

Subchapter V. Client's Right to Access and Right to Correct Information.

§ 6-2041. Right to access.

Except as provided in this subchapter and in § 6-2003, a mental health professional, mental health facility or data collector shall permit any client or client representative, upon written request, to inspect and duplicate the client's record of mental health information maintained by the mental health professional, mental health facility or data collector within 30 days from the date of receipt of the request. A mental health professional, responsible for the diagnosis or treatment of the client, shall have the opportunity to discuss the mental health information with the client or client representative at the time of such inspection. In the case of a request to a data collector for disclosure of mental health information pursuant to this section, the data collector shall grant access either: (1) Directly to the requestor; or (2) indirectly by providing the mental health information to a mental health professional designated by the requestor. If the mental health professional designated by the requestor is not the person who disclosed the mental health information to the data collector, he shall be in substantially the same or greater professional class as the mental health professional who disclosed the mental health information to the data collector. (1973 Ed., § 6-1633; Mar. 3, 1979, D.C. Law 2-136, § 501, 25 DCR 5055.)

Section references. — This section is referred to in § 6-2044.

Legislative history of Law 2-136. — See note to § 6-2001.

§ 6-2042. Authority to limit access.

A mental health professional or mental health facility may limit the disclosure of portions of a client's record of mental health information to the client or client representative only if the mental health professional primarily

responsible for the diagnosis or treatment of such client reasonably believes that such limitation is necessary to protect the client from a substantial risk of imminent psychological impairment or to protect the client or another individual from a substantial risk of imminent and serious physical injury. The mental health professional shall notify the client or client representative if the mental health professional does not grant complete access. (1973 Ed., § 6-1634; Mar. 3, 1979, D.C. Law 2-136, § 502, 25 DCR 5055.)

Legislative history of Law 2-136. — See note to § 6-2001.

§ 6-2043. Review by independent mental health professional.

In the event that disclosure of the client's information is limited, the client or client representative may designate an independent mental health professional who shall be in substantially the same or greater professional class as the mental health professional who initially limited disclosure and who shall be permitted to review the client's record of mental health information. The independent mental health professional shall permit the client or client representative to inspect and duplicate those portions of the client's record of mental health information which, in his judgment, do not pose a substantial risk of imminent psychological impairment to the client or pose a substantial risk of imminent and serious physical injury to the client or another individual. In the event that the independent mental health professional allows the client to inspect and duplicate additional portions of the client's record of mental health information, the mental health professional primarily responsible for the diagnosis or treatment of the client shall have the opportunity to discuss the information with the client at the time of transmittal, examination and duplication of information. (1973 Ed., § 6-1635; Mar. 3, 1979, D.C. Law 2-136, § 503, 25 DCR 5055.)

Section references. — This section is referred to in § 6-2044.

Legislative history of Law 2-136. — See note to § 6-2001.

§ 6-2044. Judicial action to compel access.

A client or client representative who has taken action in accordance with this subchapter may institute an action in the Superior Court of the District of Columbia to compel access to all or any part of the client's record of mental health information which was denied by the mental health professional. An action initiated under this section shall be brought within 6 months of the denial of access, in whole or in part, by the independent mental health professional. In the event that a person is indigent and is unable to obtain the services of an independent mental health professional, he may institute an action in the Superior Court of the District of Columbia, without regard to the provisions of § 6-2043: Provided, that the action is brought within 6 months of the denial of access, in whole or in part, by the mental health professional. If the person who instituted the action establishes that he made a request for

access in compliance with § 6-2041, the burden of proof shall be placed upon the mental health professional to establish by a preponderance of the evidence that the denial of access was in conformity with subchapter V of this chapter. (1973 Ed., § 6-1636; Mar. 3, 1979, D.C. Law 2-136, § 504, 25 DCR 5055.)

Legislative history of Law 2-136. — See note to § 6-2001.

§ 6-2045. Right to correct information.

(a) The mental health professional, mental health facility and data collector shall maintain the client's mental health information in an accurate and complete manner.

(b) In the event that the client or client representative questions the accuracy or completeness of the client's record of mental health information, he may, within 15 days of the date of access, submit a written amendment of reasonable length to the mental health professional, mental health facility or data collector, as the case may be. The mental health professional, mental health facility or data collector shall either:

(1) Amend the client's mental health information record in accordance with the proposed amendment; or

(2) Include the proposed amendment as part of the client's mental health information record: Provided, that the client may, at his option, withdraw the proposed amendment or file a more concise statement of disagreement as a substitute for the proposed amendment.

(c) If the requested amendment was adopted, the mental health professional, mental health facility or data collector shall either promptly transmit the client's amended record or the requested amendment to all persons to whom the client's unamended mental health information had been disclosed or promptly inform the client of the names and addresses of such persons not receiving the amended record or the requested amendment. In any such disclosure made pursuant to this subsection, the mental health professional, mental health facility or data collector, as the case may be, may also include a statement of reasons for not adopting the requested amendment. (1973 Ed., § 6-1637; Mar. 3, 1979, D.C. Law 2-136, § 505, 25 DCR 5055.)

Section references. — This section is referred to in § 6-2061.

Legislative history of Law 2-136. — See note to § 6-2001.

Subchapter VI. Security.

§ 6-2051. Security requirement.

Mental health professionals, mental health facilities and data collectors shall maintain records of mental health information in a secure manner as to effectuate the purposes of this chapter. (1973 Ed., § 6-1638; Mar. 3, 1979, D.C. Law 2-136, § 601, 25 DCR 5055.)

Legislative history of Law 2-136. — See note to § 6-2001.

§ 6-2052. Notice requirement — Employees and agents with access to information.

Mental health professionals, mental health facilities and data collectors shall provide employees and agents who have lawful access to mental health information in the course of their employment with a written statement of the requirement of maintaining the security of records of mental health information and of the penalties provided in this chapter for unauthorized disclosure. (1973 Ed., § 6-1639; Mar. 3, 1979, D.C. Law 2-136, § 602, 25 DCR 5055.)

Legislative history of Law 2-136. — See note to § 6-2001.

§ 6-2053. Same — Clients in group sessions.

Mental health professionals shall provide clients in a group session with a written statement of the prohibition against the unauthorized disclosure of mental health information and the penalties provided in this chapter for unauthorized disclosure. (1973 Ed., § 6-1640; Mar. 3, 1979, D.C. Law 2-136, § 603, 25 DCR 5055.)

Legislative history of Law 2-136. — See 567 A.2d 426 (1989), cert. denied, 494 U.S. 1037, 110 S. Ct. 1497, 108 L. Ed. 2d 632 (1990).
note to § 6-2001.

Cited in *Brown v. United States*, App. D.C.,

Subchapter VII. Penalties.

§ 6-2061. Civil liability.

(a) Except for violations of § 6-2045(a), any person who negligently violates the provisions of this chapter shall be liable in an amount equal to the damages sustained by the client plus the costs of the action and reasonable attorney's fees.

(b) Except for violations of § 6-2045(a), any person who willfully or intentionally violates the provisions of this chapter shall be liable in damages sustained by the client in an amount not less than \$1,000 plus the costs of the action and reasonable attorney's fees.

(c) Either party is entitled to trial by jury, upon request. (1973 Ed., § 6-1641; Mar. 3, 1979, D.C. Law 2-136, § 701, 25 DCR 5055.)

Legislative history of Law 2-136. — See Cir. 1985); *Doe v. Stephens*, 851 F.2d 1457 (D.C. Cir. 1988).
note to § 6-2001.

Cited in *Doe v. DiGenova*, 779 F.2d 74 (D.C.

§ 6-2062. Criminal penalties.

(a) Except for violations of subchapter V of this chapter, any person who willfully violates the provisions of this chapter shall be guilty of a misde-

meanor and such violator shall be fined not more than \$1,000 or imprisoned for not more than 60 days, or both.

(b) Any person who knowingly obtains mental health information from a mental health professional, mental health facility or data collector, under false pretenses or through deception, shall be guilty of a misdemeanor and shall be fined not more than \$5,000 or imprisoned not more than 90 days, or both. (1973 Ed., § 6-1642; Mar. 3, 1979, D.C. Law 2-136, § 702, 25 DCR 5055.)

Legislative history of Law 2-136. — See Cir. 1985); Doe v. Stephens, 851 F.2d 1457 (D.C. Cir. 1988).
note to § 6-2001.

Cited in Doe v. DiGenova, 779 F.2d 74 (D.C.

Subchapter VIII. Miscellaneous Provisions.

§ 6-2071. Penalties under other laws.

Any civil liability or criminal penalty imposed for violation of this chapter is, in addition to and not in lieu of, any civil or administrative remedy, penalty or sanction otherwise authorized by law. This chapter and the penalties prescribed for violations of this chapter shall not supersede but shall supplement all statutes of the District government and the United States government in which similar conduct is prohibited or regulated. (1973 Ed., § 6-1643; Mar. 3, 1979, D.C. Law 2-136, § 801, 25 DCR 5055.)

Legislative history of Law 2-136. — See
note to § 6-2001.

§ 6-2072. Prescriptions.

Nothing in this chapter shall be construed as limiting or interfering with District of Columbia, state or federal regulation and monitoring of the handling and dispensing of prescription drugs. (1973 Ed., § 6-1644; Mar. 3, 1979, D.C. Law 2-136, § 802, 25 DCR 5055.)

Legislative history of Law 2-136. — See
note to § 6-2001.

§ 6-2073. Authority of the Commission on Mental Health.

Nothing in this chapter shall be construed to apply to the operations of the Commission on Mental Health. (1973 Ed., § 6-1645; Mar. 3, 1979, D.C. Law 2-136, § 803, 25 DCR 5055.)

Legislative history of Law 2-136. — See
note to § 6-2001.

Mental Health Information Act inapplicable to operations of Commission on Mental Health. — The operations of the Commission on Mental Health are involved, as a

preliminary but necessary phase, of any mental health case pending in the Superior Court and it follows that, pursuant to this section, the provisions of the Mental Health Information Act are inapplicable. In re Watts, 110 WLR 2581 (Super. Ct. 1982).

§ 6-2074. Prohibition against waiver.

Any consent or agreement purporting to waive the provisions of this chapter is hereby declared to be against public policy and void. (1973 Ed., § 6-1646; Mar. 3, 1979, D.C. Law 2-136, § 804, 25 DCR 5055.)

Legislative history of Law 2-136. — See note to § 6-2001.

§ 6-2075. Conflict with federal law.

Nothing in this chapter shall be construed or applied to necessarily require or excuse noncompliance with any provision of any federal law. (1973 Ed., § 6-1647; Mar. 3, 1979, D.C. Law 2-136, § 806, 25 DCR 5055.)

Legislative history of Law 2-136. — See *Hygiene v. Medical Serv.*, App. D.C., 474 A.2d 831 (1984); *Doe v. DiGenova*, 779 F.2d 74 (D.C. Cir. 1985).
note to § 6-2001.
Cited in District of Columbia Inst. of Mental

§ 6-2076. Effective date.

The provisions of this chapter shall take effect pursuant to § 1-233(c)(1) and shall govern all mental health information regardless of when such information came into existence. However, the provisions of this chapter which create liabilities shall only apply to acts or failures to act which occur on or after the effective date. (1973 Ed., § 6-1648; Mar. 3, 1979, D.C. Law 2-136, § 807(a), 25 DCR 5055.)

Legislative history of Law 2-136. — See note to § 6-2001.

CHAPTER 21. CHILD ABUSE AND NEGLECT.

Subchapter I. Reporting Abuse and Neglect.

Sec.

- 6-2101. Definitions.
- 6-2102. Handling of reports — By Division.
- 6-2103. Same — By police.
- 6-2104. Investigation.
- 6-2104.1. Exposure of children to drug-related activity.
- 6-2105. Removal of children.
- 6-2106. Photographs and radiological examinations.
- 6-2107. Social investigation; services; report.

Subchapter II. Child Protection Register.

- 6-2111. Establishment; purposes; staff.
- 6-2112. Information to be retained.
- 6-2113. Access to Register; release of information generally.
- 6-2114. Release of information for research and evaluation.
- 6-2115. Notification of persons identified in a report.
- 6-2116. Challenges to information in Register.
- 6-2117. Expungement.
- 6-2118. Penalty for unauthorized release of information.
- 6-2119. Prosecution.

Subchapter III. Child Protective Services Division.

Sec.

- 6-2121. Establishment and purposes.
- 6-2122. Organization.
- 6-2123. Duties and responsibilities.
- 6-2124. Services authorized; custodial placement; removal of child.
- 6-2125. Medical treatment authorized.
- 6-2126. Confidentiality of records and information.
- 6-2127. Unauthorized disclosure of records.

Subchapter IV. Child Abuse and Neglect Prevention Children's Trust Fund.

- 6-2131. Definitions.
- 6-2132. Establishment of the Child Abuse and Neglect Prevention Children's Trust Fund.
- 6-2133. Establishment of Board of Directors.
- 6-2134. Powers and responsibilities of the Board of Directors.
- 6-2135. Service of process.
- 6-2136. Corporate powers.
- 6-2137. Dissolution.
- 6-2138. Tax status.

Subchapter I. Reporting Abuse and Neglect.

§ 6-2101. Definitions.

For the purposes of this act:

- (1) "Child Protection Register" means the confidential index of all reports established pursuant to § 6-2111.
- (2) "Credible evidence" means any evidence which indicates that a child is an abused or neglected child, including the statement of any person worthy of belief.
- (3) Except where used in Title IV of this act, "Division" means the Child Protective Services Division of the District of Columbia Department of Human Services.
- (4) "Guardian ad litem" means an attorney appointed by the Superior Court of the District of Columbia to represent the child's best interests in neglect proceedings.
- (5) "Police" means the Metropolitan Police Department of the District of Columbia.
- (6) "Report" means a report to the police or the Division of a suspected or known neglected child.
- (7) "Source" means the person or institution from whom a report originates.
- (8) "Supported report" means a report, made pursuant to § 2-1353, which is supported by credible evidence.

(9) "Unsupported report" means a report, made pursuant to § 2-1353, which is not supported by credible evidence.

(10) "Drug" shall have the same meaning as the term "controlled substance" has in § 33-501(4).

(11) "Drug-related activity" means the use, sale, distribution, or manufacture of a drug or drug paraphernalia without a legally valid license or medical prescription.

(12) "Law enforcement officer" means a sworn officer of the Metropolitan Police Department of the District of Columbia.

(13) "Abused," when used with reference to a child, means a child whose parent, guardian or custodian inflicts or fails to make reasonable efforts to prevent the infliction of physical or mental injury upon the child, including excessive corporal punishment, an act of sexual abuse, molestation, or exploitation, or an injury that results from exposure to drug-related activity. (1973 Ed., § 6-2101; Sept. 23, 1977, D.C. Law 2-22, title I, § 102, 24 DCR 3341; Mar. 15, 1990, D.C. Law 8-87, § 3(a), 37 DCR 50.)

Cross references. — As to right to counsel in Family Division proceedings, see § 16-2304.

Temporary amendments of section. — Section 3 of D.C. Law 10-61 added a new paragraph (14) to read as follows:

"(14) 'Neglected child' shall have the same meaning for this act as is provided in § 16-2301(9)."

Section 3(b) of D.C. Law 10-61, redesignated as section 5(b) by § 51 of D.C. Law 10- (Act 10-302), provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Prevention of Child Neglect Amendment Act of 1993, whichever occurs first.

Emergency act amendments. — For temporary amendment of section, see § 3 of the Prevention of Child Neglect Emergency Amendment Act of 1993 (D.C. Act 10-100, August 9, 1993, 40 DCR 6141).

For temporary amendment of section, see § 3 of the Prevention of Child Neglect Emergency Amendment Act of 1994 (D.C. Act 10-288, July 22, 1994, 41 DCR 4992).

Legislative history of Law 2-22. — Law 2-22, the "Prevention of Child Abuse and Neglect Act of 1977," was introduced in Council and assigned Bill No. 2-48, which was referred to the Committee on Human Resources and Aging and the Committee on the Judiciary. The Bill was adopted on first and second readings on May 17, 1977, and May 31, 1977, respectively. Signed by the Mayor on July 6, 1977, it was assigned Act No. 2-53 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-87. — See note to § 6-2104.1.

Legislative history of Law 10-61. — D.C. Law 10-61, "Prevention of Child Neglect Temporary Amendment Act of 1993," was introduced in Council and assigned Bill No. 10-374. The Bill was adopted on first and second readings on July 21, 1993, and September 21, 1993, respectively. Signed by the Mayor on October 1, 1993, it was assigned Act No. 10-114 and transmitted to both Houses of Congress for its review. D.C. Law 10-61 became effective on November 20, 1993.

References in text. — "This act," referred to in the introductory language of this section, is the Prevention of Child Abuse and Neglect Act of 1977, D.C. Law 2-22.

"Title IV of this act," referred to in paragraph (3), is Title IV of D.C. Law 2-22.

The Department of Human Resources was replaced by the Department of Human Services pursuant to Reorganization Plan No. 2 of 1979, dated February 21, 1980.

Private cause of action. — Children in foster care and children reported to have been abused or neglected but not yet in the District's custody have a private cause of action for enforcement of the Prevention of Child Abuse and Neglect Act. *LaShawn A. ex rel. Moore v. Kelly*, 990 F.2d 1319 (D.C. Cir. 1993), cert. denied, — U.S. —, 114 S. Ct. 691, 126 L. Ed. 2d 659 (1994).

Cited in *Turner v. District of Columbia*, App. D.C., 532 A.2d 662 (1987); *Hines v. District of Columbia*, App. D.C., 580 A.2d 133 (1990); *LaShawn A. v. Dixon*, 762 F. Supp. 959 (D.D.C. 1991), modified, 990 F.2d 1319 (D.C. Cir. 1993), cert. denied, — U.S. —, 114 S. Ct. 691, 126 L. Ed. 2d 659 (1994).

§ 6-2102. Handling of reports — By Division.

(a) Upon the receipt of an oral report, the Division shall immediately inform the police of the contents of the report, if it alleges a child is or may have been an abused child.

(b) The Division shall commence an investigation of all reports alleging neglect other than abuse within 24 hours of the receipt of the report except that when:

(1) A report alleges that a child is left alone or with inadequate supervision, the Division shall commence an investigation immediately. If the Division is unable to dispatch a worker to the child forthwith, it shall inform the police of the report;

(2) A report indicates the existence of an immediate danger to a child and the immediate removal of the child from his or her surroundings appears necessary despite the available resources, the Division shall inform the police of the contents of the report and request the police to investigate. The Division shall immediately commence a social investigation.

(c) In all cases occurring after normal working hours or when it is otherwise deemed necessary, the Division may request the assistance of the police. (1973 Ed., § 6-2102; Sept. 23, 1977, D.C. Law 2-22, title I, § 104, 24 DCR 3341.)

Section references. — This section is referred to in §§ 6-2123 and 6-2124.

Legislative history of Law 2-22. — See note to § 6-2101.

Negligence of Division employees. — The Child Abuse Prevention Act imposes upon certain public officials specific duties and responsibilities which are intended to protect a narrowly defined and otherwise helpless class of persons: Abused and neglected children. Thus when the Division receives a report that chil-

dren who were specifically and individually identified are being abused a “special relationship” or “special duty” arises under the Act which would make the District liable to members of that protected class for the negligence of Division employees. *Turner v. District of Columbia*, App. D.C., 532 A.2d 662 (1987).

Cited in *LaShawn A. v. Dixon*, 762 F. Supp. 959 (D.D.C. 1991), modified, 990 F.2d 1319 (D.C. Cir. 1993).

§ 6-2103. Same — By police.

(a) The police shall, as soon as possible after the receipt of a report of a neglected child other than an abused child, inform the Division of its contents and any action the police are taking or have taken.

(b) The police may, upon the receipt of a report of an abused child, inform the Division of its contents and shall, as soon as possible when the report is a supported report, inform the Division of its contents and any action they are taking or have taken.

(c) The police shall immediately after a report is received commence an investigation of the circumstances alleged in the report.

(d) The police shall immediately after a report is received commence an investigation of a case of a neglected child in immediate danger which case was referred from the Division or reported directly to the police.

(e) Upon the receipt of a report alleging a child is or has been left alone or without adequate supervision, the police shall respond to the report immediately and shall take such steps as are necessary to safeguard the child until a Division staff member arrives: Provided, however, that if the Division does not

arrive within a reasonable time, the police may transport the child to the Division. The transporting of a child to the Division pursuant to this subsection shall not be considered a taking into custody as described in § 16-2309. (1973 Ed., § 6-2103; Sept. 23, 1977, D.C. Law 2-22, title I, § 105, 24 DCR 3341.)

Section references. — This section is referred to in § 6-2124.

Legislative history of Law 2-22. — See note to § 6-2101.

Cited in *Turner v. District of Columbia*, App. D.C., 532 A.2d 662 (1987).

§ 6-2104. Investigation.

(a) The primary responsibility for the initial investigation is with the police in cases of an allegedly abused child and with the Division in other cases of an allegedly neglected child: Provided, however, that the investigation of a report involving acts or omissions of either the Department of Human Services or the police shall be conducted by the department which is not involved.

(b) The purpose of the initial investigation shall be to determine:

- (1) The nature, extent, and cause of the abuse or neglect;
- (2) The identity of the person responsible for the abuse or neglect;
- (3) The name, age, sex, and condition of the abused or neglected child and all other children in the home;
- (4) The conditions in the home at the time of the investigation;
- (5) Whether there is any child in the home whose health, safety, or welfare is in jeopardy because of his or her treatment in the home or his or her home environment; and

(6) Whether any child who is in jeopardy because of treatment in the home or his or her home environment should be removed from the home or can be protected by the provision of resources such as those listed in § 6-2124. (1973 Ed., § 6-2104; Sept. 23, 1977, D.C. Law 2-22, title I, § 106, 24 DCR 3341.)

Section references. — This section is referred to in §§ 6-2106 and 6-2123.

Legislative history of Law 2-22. — See note to § 6-2101.

References in text. — The Department of Human Resources was replaced by the Department of Human Services pursuant to Reorganization Plan No. 2 of 1979, dated February 21, 1980.

Negligence of Division employees. — The Child Abuse Prevention Act imposes upon certain public officials specific duties and responsibilities which are intended to protect a narrowly defined and otherwise helpless class of

persons: Abused and neglected children. Thus when the Division receives a report that children who were specifically and individually identified are being abused a "special relationship" or "special duty" arises under the Act which would make the District liable to members of that protected class for the negligence of Division employees. *Turner v. District of Columbia*, App. D.C., 532 A.2d 662 (1987).

Cited in *In re U.F.*, 118 WLR 541 (Super. Ct. 1990); *LaShawn A. v. Dixon*, 762 F. Supp. 959 (D.D.C. 1991), modified, 990 F.2d 1319 (D.C. Cir. 1993).

§ 6-2104.1. Exposure of children to drug-related activity.

(a) The Division shall, upon receipt of a report from a law enforcement officer or a health professional that a child is abused as a result of inadequate care, control, or subsistence due to exposure to drug-related activity in the home environment:

(1) Commence an initial investigation in accordance with §§ 6-2102(b) and 6-2104;

(2) Determine whether the child should be removed temporarily from the home environment or can be protected in the home environment in accordance with § 6-2105(a); and

(3) Commence a social investigation and provide social services in accordance with § 6-2107(b), if the initial investigation results in a supported report.

(b) A social investigation pursuant to paragraph (a)(3) of this section shall include:

(1) A determination of whether there is reasonable evidence that any member of the child's home environment uses drugs illegally, is dependent on drugs, or needs drug abuse treatment;

(2) A determination of whether there is reasonable evidence that the child is exposed regularly to drug use in the home environment;

(3) A determination of whether there is reasonable evidence that the distribution or sale of illegal drugs or drug paraphernalia occurs in the child's home environment; and

(4) A determination of whether there is reasonable evidence that drug-related activity has contributed to or is likely to contribute to violent conduct within the child's home environment.

(c) The social services required by paragraph (a)(3) of this section shall include:

(1) Provision of drug treatment to any member of the child's home environment who is determined to be in need of drug treatment according to Chapter 16 of Title 32;

(2) Measures to facilitate action by the child's family, with the assistance of the Division and the police, if necessary, to eliminate the child's exposure to drug use or to the distribution or sale of illegal drugs or drug paraphernalia in the home environment; and

(3) Any other service authorized or required by this subchapter or other applicable laws or rules of the District. (Sept. 23, 1977, D.C. Law 2-22, title I, § 106a, as added Mar. 15, 1990, D.C. Law 8-87, § 3(b), 37 DCR 50.)

Legislative history of Law 8-87. — Law 8-87, the "Protection of Children from Exposure to Drug-Related Activity Amendment Act of 1989," was introduced in Council and assigned Bill No. 8-139, which was referred to the Committee on the Judiciary. The Bill was adopted

on first and second readings on November 21, 1989, and December 5, 1989, respectively. Signed by the Mayor on December 21, 1989, it was assigned Act No. 8-137 and transmitted to both Houses of Congress for its review.

§ 6-2105. Removal of children.

(a) In cases in which a child is alleged to be a neglected, but not an abused, child the Division shall determine whether the child should be removed from the home or can be protected by the provision of services or resources. If in the opinion of the Division the available services or resources are insufficient to protect the child and there is insufficient time to petition for removal, the

Division shall request the police to remove the child pursuant to § 16-2309(a)(3) or (a)(4).

(b) In all cases for which the police are responsible for the initial investigation but which do not involve an immediate danger to a child, the police shall seek from the Division and the Division shall provide assistance in the determination of whether the child can be protected by the provision of services or resources or whether removal is necessary. Whenever possible the Division shall dispatch a worker to the scene to provide assistance in this determination.

(c) In all cases for which the police are responsible for the initial investigation and which do involve an immediate danger to a child and require removal pursuant to § 16-2309(a)(3), the police shall immediately notify the Division of the removal and the latter shall investigate alternative placements for the child.

(d) When, prior to a shelter care hearing, the Division locates a suitable alternative placement pursuant to subsection (c) of this section, the police may release the child pursuant to § 16-2311(a)(1).

(e) The Chief of the Division or his or her designee shall take custody of a child and remove the child from a hospital pending further custody proceedings if:

(1) The Chief of the Division receives written notification from the chief executive officer of a hospital located in the District of Columbia that a child has resided in the hospital for at least 10 days following the birth of the child, despite a medical determination that the child is ready for discharge; and

(2) The parent, guardian, or custodian of the child, as established by the hospital admission records, has not taken any action nor made any effort to maintain a parental, guardianship, or custodial relationship or contact with the child. (1973 Ed., § 6-2105; Sept. 23, 1977, D.C. Law 2-22, title I, § 107, 24 DCR 3341; June 8, 1990, D.C. Law 8-134, § 3, 37 DCR 2613.)

Section references. — This section is referred to in §§ 6-2123 and 16-2309.

Legislative history of Law 2-22. — See note to § 6-2101.

Legislative history of Law 8-134. — Law 8-134, the "Infant and Child Abandonment Prevention Amendment Act of 1990," was introduced in Council and assigned Bill No. 8-404, which was referred to the Committee on Human Services. The Bill was adopted on first and

second readings on March 13, 1990, and March 27, 1990, respectively. Signed by the Mayor on April 13, 1990, it was assigned Act No. 8-190 and transmitted to both Houses of Congress for its review.

Cited in *Turner v. District of Columbia*, App. D.C., 532 A.2d 662 (1987); *LaShawn A. v. Dixon*, 762 F. Supp. 959 (D.D.C. 1991), modified, 990 F.2d 1319 (D.C. Cir. 1993).

§ 6-2106. Photographs and radiological examinations.

If there is a supported report, any person responsible for the investigation under § 6-2104 may take, or have taken, color photographs of each area of trauma visible on the child or photographs of the conditions surrounding the neglect of the child and, if medically indicated, have radiological examinations performed on the child. (1973 Ed., § 6-2106; Sept. 23, 1977, D.C. Law 2-22, title I, § 108, 24 DCR 3341.)

Legislative history of Law 2-22. — See note to § 6-2101.

§ 6-2107. Social investigation; services; report.

(a) If the initial investigation results in a supported report, the information from the initial investigation shall be immediately referred to the police or the Division, as appropriate. A social investigation shall be commenced immediately by the Intrafamily Branch of the Social Services Division of the Superior Court of the District of Columbia in all cases of an allegedly abused child which are referred for petition to the Family Division of the Superior Court of the District of Columbia and by the Division in all other cases, except that cases which are or were recently active with the Division may be investigated by the Division. The purpose of the social investigation shall be to determine what services are required by the family to remedy the conditions of abuse or neglect.

(b) If there is a supported report, the agency responsible for the social investigation shall, as soon as possible, prepare a plan for each child and family for whom services are required on more than an emergency basis and shall forthwith take such steps to ensure the protection of the child and the preservation, rehabilitation and, when appropriate, reunification of the family as may be necessary to achieve the purposes of this act. Such steps may include, but need not be limited to: (1) arranging for necessary protective, rehabilitative and financial services to be provided to the child and the child's family in a manner which maintains the child in his or her home; (2) referring the child and the child's family for placement in a family shelter or other appropriate facility; (3) securing services aimed at reuniting (with his or her family) a child taken into custody, including but not limited to parenting classes and family counseling; (4) providing or making specific arrangements for the case management of each case when child protective services are required; and (5) referring the family to drug treatment services in the event of neglect or abuse that results from drug-related activity. To the maximum extent possible, the resources of the community (public and private) shall be utilized for the provision of services and case management.

(c) A report of the social investigation required under subsection (a) of this section and the plan required under subsection (b) of this section shall be submitted to all counsel at least 5 days prior to the date of the fact-finding hearing in cases in which a petition was filed pursuant to § 16-2305: Provided, that nothing added to the report or the plan subsequent to either an initial appearance or shelter care hearing shall be considered by the court prior to the completion of the fact-finding hearing unless the parent, guardian, or custodian alleged to be responsible for the neglect consents to such consideration. (1973 Ed., § 6-2107; Sept. 23, 1977, D.C. Law 2-22, title I, § 109, 24 DCR 3341; Mar. 15, 1990, D.C. Law 8-87, § 3(c), 37 DCR 50; Mar. 16, 1995, D.C. Law 10-227, § 2(a), 42 DCR 4.)

Effect of amendments. — D.C. Law 10-227 added "including but not limited to parenting classes and family counseling" at the end of (b)(3).

Legislative history of Law 2-22. — See note to § 6-2101.

Legislative history of Law 8-87. — See note to § 6-2104.1.

Legislative history of Law 10-227. — Law 10-227, the "Parental Responsibility Amendment Act of 1994," was introduced in Council and assigned Bill No. 10-634, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December

27, 1994, it was assigned Act No. 10-368 and transmitted to both Houses of Congress for its review. D.C. Law 10-227 became effective on March 16, 1995.

References in text. — "This act," referred to at the end of the first sentence of subsection (b), is the Prevention of Child Abuse and Neglect Act of 1977, D.C. Law 2-22.

Cited in LaShawn A. v. Dixon, 762 F. Supp. 959 (D.D.C. 1991), modified, 990 F.2d 1319 (D.C. Cir. 1993); In re T.B., 120 WLR 1089 (Super. Ct. 1992).

Subchapter II. Child Protection Register.

§ 6-2111. Establishment; purposes; staff.

(a) There is hereby established a Child Protection Register to be maintained by the Division.

(b) The purposes of the Register are to:

(1) Maintain a confidential index of cases of abused and neglected children;

(2) Assist in the identification and treatment of abused and neglected children and their families; and

(3) Serve as a resource for the evaluation, management, and planning of programs and services for abused and neglected children.

(c) The staff of the Department of Human Services assigned to maintain the Child Protection Register shall maintain 24-hour, 7 day-a-week telephone lines which may be combined with the 24-hour intake components described in subchapter III of this chapter.

(d) Said staff shall:

(1) Receive reports and information necessary for the operation of the Child Protection Register and make appropriate entries in such Register as required by § 6-2112(a); and

(2) Release information contained in the Child Protection Register in a manner consistent with this act. (1973 Ed., § 6-2111; Sept. 23, 1977, D.C. Law 2-22, title II, § 201, 24 DCR 3341.)

Section references. — This section is referred to in § 6-2101.

Legislative history of Law 2-22. — See note to § 6-2101.

References in text. — "This act," referred to at the end of paragraph (2) of subsection (d), is the Prevention of Child Abuse and Neglect Act of 1977, D.C. Law 2-22.

The Department of Human Resources was replaced by the Department of Human Services pursuant to Reorganization Plan No. 2 of 1979, dated February 21, 1980.

Cited in LaShawn A. v. Dixon, 762 F. Supp. 959 (D.D.C. 1991), modified, 990 F.2d 1319 (D.C. Cir. 1993).

§ 6-2112. Information to be retained.

(a) There shall be retained in the Child Protection Register the following information concerning each supported report:

(1) The recipient of the report, the date and the time of the receipt of the report;

- (2) The information required in the report pursuant to § 2-1353;
- (3) The census tract and ward in which the child lives and other demographic information concerning the incident referred to in the report;
- (4) The agencies to which the report was referred and the date and the time of the referral;
- (5) The agency or agencies making the initial investigation, the summary of the results of the initial investigation and the dates and the times the investigations were begun and terminated;
- (6) The agency or agencies making the social investigation, the summary of the results of the social investigation, the dates and the times said investigation was begun and terminated, the services offered and when they were offered;
- (7) The agency or agencies to which the referrals were made and the services requested, with the dates of the opening and the closing of the case;
- (8) The placements of the child and the dates of each placement;
- (9) Court actions concerning the child and the dates thereof; and
- (10) The date the case was closed.

(b) There may be retained in the Child Protection Register other information required for research, planning, evaluation and management purposes pursuant to rules adopted according to § 1-1501 et seq.

(c) Information in an unsupported report shall be retained in a separate index in which all information that could identify any person referred to in the unsupported report shall be destroyed.

(d) The staff which maintains the Child Protection Register shall review all open cases every 6 months to assure that information in said Register is current and shall request updated information from the appropriate agencies as indicated.

(e) The public agencies responsible for receiving reports, making investigations and providing or securing case management shall be responsible for supplying the information required under this section to the Child Protection Register on a timely basis. (1973 Ed., § 6-2112; Sept. 23, 1977, D.C. Law 2-2, title II, § 202, 24 DCR 3341.)

Section references. — This section is referred to in § 6-2111.

Legislative history of Law 2-22. — See note to § 6-2101.

§ 6-2113. Access to Register; release of information generally.

(a) The staff which maintains the Child Protection Register shall grant access to information contained in said Register only to the following persons:

- (1) Officers of the police for the purpose of an investigation of a report;
- (2) The Corporation Counsel of the District of Columbia or his or her agent for the purpose of fulfilling his or her official duties concerning cases of an allegedly neglected or abused child;
- (3) The personnel of the Division and the Social Services Division of the Superior Court of the District of Columbia for the purpose of investigating a report or providing services to a family or child who is the subject of a report;

(4) The guardian ad litem of a child who is the subject of a report;

(5) Each person identified in a report as a person responsible for the neglect of the child or that person's attorney;

(6) The parent, guardian, custodian or attorney of the child who is the subject of the report; and

(7) A child-placing agency licensed in the District of Columbia or the Department of Human Services' staff who makes child placements for the purpose of checking a proposed foster care or adoptive placement for a report of abuse or neglect, upon submission of a signed consent for release of information pursuant to § 32-1008.1.

(b) The investigators of a report may divulge the information obtained from the Child Protection Register to medical professionals for the purpose of obtaining a diagnosis of the child who is the subject of the report.

(c) Each person seeking access to the Child Protection Register shall show identification satisfactory to the staff which maintains said Register before access is allowed.

(d) The staff which maintains the Child Protection Register shall not release to those persons identified in paragraphs (5), (6), and (7) of subsection (a) of this section any information that identifies the source of a report or the witnesses to the incident referred to in a report unless said staff first obtains permission from the source of the report or from the witnesses named in the report.

(e) The staff which maintains the Child Protection Register shall release only that information which is necessary for the purpose of the request and which does not violate the confidentiality of the persons identified in the report, except as is necessary to meet the requirements of subsection (a) of this section.

(f) The staff which maintains the Child Protection Register shall not release the information contained in said Register to another jurisdiction unless:

(1) That jurisdiction has comparable safeguards for ensuring the confidentiality of information regarding persons identified in the report and for withholding the identity of the source of the report; or

(2) The staff obtains permission for the release of the information from each person identified in the report and from the source of the report.

(g) The staff which maintains the Child Protection Register shall maintain a record of each release of information, which record shall contain the following information:

(1) The date of the release of the information;

(2) To whom the information was released and the address of that person or institution; and

(3) The purpose for which the information was released.

(h) The information in the Child Protection Register shall be released orally only to the police and to personnel of the Division and of the Social Services Division of the Superior Court of the District of Columbia when they are investigating a report. Any release of information to other persons listed in subsection (a) of this section or pursuant to § 6-2114 shall be preceded by a written request from the person requesting the information. (1973 Ed.,

§ 6-2113; Sept. 23, 1977, D.C. Law 2-22, title II, § 203, 24 DCR 3341; Aug. 21, 1982, D.C. Law 4-141, § 3, 29 DCR 2867; Mar. 15, 1990, D.C. Law 8-87, § 3(d), 37 DCR 50.)

Section references. — This section is referred to in § 6-2126.

Legislative history of Law 2-22. — See note to § 6-2101.

Legislative history of Law 4-141. — Law 4-141, the "District of Columbia Child Placing Authority Act Amendments Act of 1982," was introduced in Council and assigned Bill No. 4-164, which was referred to the Committee on

Human Services. The Bill was adopted on first and second readings on May 25, 1982, and June 8, 1982, respectively. Signed by the Mayor on June 30, 1982, it was assigned Act No. 4-207 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-87. — See note to § 6-2104.1.

§ 6-2114. Release of information for research and evaluation.

The staff which maintains the Child Protection Register may release information from said Register for research and evaluation only upon an order of the Superior Court of the District of Columbia: Provided, however, that no information identifying the persons named in a report shall be made available to the researcher or evaluator. (1973 Ed., § 6-2114; Sept. 23, 1977, D.C. Law 2-22, title II, § 204, 24 DCR 3341.)

Section references. — This section is referred to in §§ 6-2113 and 6-2126.

Legislative history of Law 2-22. — See note to § 6-2101.

§ 6-2115. Notification of persons identified in a report.

(a) The staff which maintains the Child Protection Register shall, within 7 days from the date that a report is entered in said Register, give notice to each person identified in the report of the fact that the report identifies him or her as responsible for the alleged abuse or neglect of the child who is the subject of the report.

(b) This notice shall include the following information:

(1) The date that the report identifying the person was entered in the Child Protection Register;

(2) The right of the person to review the entire report, except information which identifies other persons mentioned in the report; and

(3) The administrative procedures through which the person may seek the correction of information which he or she alleges is incorrect. (1973 Ed., § 6-2115; Sept. 23, 1977, D.C. Law 2-22, title II, § 205, 24 DCR 3341.)

Legislative history of Law 2-22. — See note to § 6-2101.

§ 6-2116. Challenges to information in Register.

The Mayor shall establish, by rules adopted pursuant to § 1-1501 et seq., procedures to permit a person identified in the Child Protection Register to challenge information which he or she alleges is incorrect. (1973 Ed., § 6-2116; Sept. 23, 1977, D.C. Law 2-22, title II, § 206, 24 DCR 3341.)

Section references. — This section is referred to in § 6-2117.

Legislative history of Law 2-22. — See note to § 6-2101.

§ 6-2117. Expungement.

(a) The staff which maintains the Child Protection Register shall expunge from each report all information that identifies any person in the report upon:

(1) The 18th birthday of the child, if there is no reasonable suspicion or evidence that a younger sibling is being abused or neglected; or

(2) The end of the 5th year after the termination of the social rehabilitation services directed toward the abuse and neglect, whichever occurs first.

(b) The staff which maintains the Child Protection Register shall expunge, pursuant to the rules adopted under § 6-2116, material successfully challenged as incorrect. (1973 Ed., § 6-2117; Sept. 23, 1977, D.C. Law 2-22, title II, § 207, 24 DCR 3341.)

Legislative history of Law 2-22. — See note to § 6-2101.

§ 6-2118. Penalty for unauthorized release of information.

Any staff member of the Child Protection Register who willfully releases information obtained from the Register in violation of this act shall be fined not more than \$1,000. (1973 Ed., § 6-2118; Sept. 23, 1977, D.C. Law 2-22, title II, § 208, 24 DCR 3341.)

Legislative history of Law 2-22. — See note to § 6-2101.

in this section, is the Prevention of Child Abuse and Neglect Act of 1977, D.C. Law 2-22.

References in text. — “This act,” referred to

§ 6-2119. Prosecution.

All violations of this act shall be prosecuted by the Corporation Counsel of the District of Columbia or his or her designee in the name of the District of Columbia. (1973 Ed., § 6-2119; Sept. 23, 1977, D.C. Law 2-22, title II, § 209, 24 DCR 3341.)

Legislative history of Law 2-22. — See note to § 6-2101.

in this section, is the Prevention of Child Abuse and Neglect Act of 1977, D.C. Law 2-22.

References in text. — “This act,” referred to

Subchapter III. Child Protective Services Division.

§ 6-2121. Establishment and purposes.

(a) There shall be maintained within the Department of Human Services a separate and distinct Division. The Division shall have as its purposes and functions:

(1) Safeguarding the rights and protecting the welfare of children whose parents are unable to do so;

(2) Offering highly specialized diagnostic and treatment services to families when there is specific harm to the child's physical or emotional well-being;

(3) Ensuring that neglected and abused children are protected from further experiences and conditions detrimental to their healthy growth and development; and

(4) Providing parenting classes or family counseling and other services on behalf of the child designed to help parents recognize and remedy the conditions harmful to the child and to fulfill their parental roles more adequately.

(b) The Division shall have no other function which is not directly related to its child protective service purpose, except that the 24-hour intake unit may on an emergency basis, after normal office hours, offer crisis assistance to adults.

(c) The Department of Human Services shall support the purpose and function of the Division by obtaining substitute care for a child whose parents are unable, even with available help, to meet the child's minimum needs and, where appropriate, by providing to the family of such child services which are aimed at reuniting the family as quickly as possible. (1973 Ed., § 6-2131; Sept. 23, 1977, D.C. Law 2-22, title III, § 301, 24 DCR 3341; Mar. 16, 1995, D.C. Law 10-227, § 2(b), 42 DCR 4.)

Effect of amendments. — D.C. Law 10-227 inserted "parenting classes or family counseling and other" near the beginning of (a)(4).

Legislative history of Law 2-22. — See note to § 6-2101.

Legislative history of Law 10-227. — See note to § 6-2107.

References in text. — The Department of Human Resources was replaced by the Department of Human Services pursuant to Reorganization Plan No. 2 of 1979, dated February 21, 1980.

D.C. Law Review. — For article, "Combating unnecessary family separation: How to seek court-ordered housing for families in the District of Columbia neglect system," see 2 D.C. L. Rev. 25 (1993).

Private cause of action. — Children in foster care and children reported to have been abused or neglected but not yet in the District's custody have a private cause of action for en-

forcement of the Prevention of Child Abuse and Neglect Act. *LaShawn A. ex rel. Moore v. Kelly*, 990 F.2d 1319 (D.C. Cir. 1993), cert. denied, — U.S. —, 114 S. Ct. 691, 126 L. Ed. 2d 659 (1994).

Liability for violation of duty to protected class. — The Child Abuse Prevention Act imposes upon certain public officials specific duties and responsibilities which are intended to protect a narrowly defined and otherwise helpless class of persons: Abused and neglected children. Thus when the Division receives a report that children who were specifically and individually identified are being abused a "special relationship" or "special duty" arises under the Act which would make the District liable to members of that protected class for the negligence of Division employees. *Turner v. District of Columbia*, App. D.C., 532 A.2d 662 (1987).

Cited in *In re T.B.*, 120 WLR 1089 (Super. Ct. 1992).

§ 6-2122. Organization.

(a) The Division shall be administered by a full-time Chief who shall be qualified by reason of training and experience to further the purposes of this act.

(b) The Chief of the Division shall be responsible for all child protective services provided by the Department of Human Services, for monitoring child protective services provided by compact or contract with the Department of Human Services and for coordinating activities with the Social Services Division of the Superior Court of the District of Columbia.

(c) The Division shall have sufficient staff, supervisory personnel, and resources to accomplish the purposes of this act, including the capacity to provide emergency and continuing service resources to abused and neglected children and their families.

(d) Staff qualifications, caseload levels, and supervision requirements shall be guided by standards set by the Child Welfare League of America or other child welfare organizations, shall be published in the District of Columbia Register for public comments, and shall be reviewed by the Mayor's Inter-agency Interdepartmental Committee on Abuse and Neglect.

(e) There shall be within the Division a 24-hour intake component staffed by workers specially trained in intake and crisis intervention. The unit shall be staffed at all times, 24 hours a day, 7 days a week. This component shall maintain the capacity for receiving reports and for responding promptly with investigation and emergency services. This component shall maintain a widely publicized telephone number for receiving reports at all times and shall maintain sufficient telephone lines and qualified staff so that all calls will be answered immediately by a trained worker. (1973 Ed., § 6-2132; Sept. 23, 1977, D.C. Law 2-22, title III, § 302, 24 DCR 3341.)

Legislative history of Law 2-22. — See note to § 6-2101.

References in text. — “This act,” referred to in subsections (a) and (c), is the Prevention of Child Abuse and Neglect Act of 1977, D.C. Law 2-22.

The Department of Human Resources was replaced by the Department of Human Services pursuant to Reorganization Plan No. 2 of 1979, dated February 21, 1980.

Liability for violation of duty to protected class. — The Child Abuse Prevention Act imposes upon certain public officials specific duties and responsibilities which are in-

tended to protect a narrowly defined and otherwise helpless class of persons: Abused and neglected children. Thus when the Division receives a report that children who were specifically and individually identified are being abused a “special relationship” or “special duty” arises under the Act which would make the District liable to members of that protected class for the negligence of Division employees. *Turner v. District of Columbia*, App. D.C., 532 A.2d 662 (1987).

Cited in *LaShawn A. v. Dixon*, 762 F. Supp. 959 (D.D.C. 1991), modified, 990 F.2d 1319 (D.C. Cir. 1993).

§ 6-2123. Duties and responsibilities.

(a) The Chief of the Division shall have the following duties and responsibilities, any of which may be contracted for with private or other public agencies:

(1) To receive and investigate reports of neglect as provided in § 103 of this act, and §§ 6-2102 and 6-2104 and to assist in the determination of the need for the removal of an abused child as provided in § 6-2105;

(2) Within 90 days of taking a child into custody pursuant to paragraph (1) of subsection (c) of § 6-2124, to return the child to the home or to request the filing of a neglect petition in the Family Division of the Superior Court of the District of Columbia;

(3) To maintain a program of treatment and services for families of neglected and abused children;

(4) To prepare annually a plan for child protective services which shall be reviewed and commented on by the Mayor's Committee on Child Abuse and Neglect. The plan shall:

(A) Describe the Division's implementation of this act, including its organization, staffing, method of operations and financing, and programs and procedures for the receipt, investigation and verification of reports;

(B) Describe the provisions for the determination of protective and the treatment of ameliorative service needs, and the provision of such services;

(C) State the guidelines for referrals to the Family Division of the Superior Court of the District of Columbia; and

(D) State the provisions for monitoring, evaluation and planning. The 1st plan shall be made available to the public within 90 days of September 23, 1977;

(5) To encourage and assist in the formation of child abuse/neglect teams in hospitals, health and mental health clinics and other appropriate facilities in the District of Columbia; and

(6) To take whatever additional actions are necessary to accomplish the purposes of this act.

(b) The Director of the Department of Human Services, in addition to his or her other responsibilities, shall have the following duties and responsibilities, any of which may be contracted for with private or other public agencies:

(1) When a child has been adjudicated a neglected child and committed to the Department of Human Services, to offer rehabilitative services to the child's family;

(2) When rehabilitative services have failed to reunite a committed child and his or her family within a reasonable time, to prepare a permanent plan for the child;

(3) To establish or attempt to secure priority access for protective service clients, by contract or agreement with private organizations, other public agencies, or other Department of Human Services units, to services necessary for the preservation or reunification of families. These services may include but shall not be limited to:

(A) Emergency financial aid;

(B) Emergency caretakers;

(C) Homemakers;

(D) Family shelters;

(E) Emergency foster homes;

(F) Facilities providing medical, psychiatric or other therapeutic services;

(G) Day care;

(H) Parent aides/lay therapists;

(4) To monitor and evaluate services to and needs of neglected children and their families;

(5) To compile and publish training materials and provide technical assistance on neglect prevention, identification and treatment; and

(6) To prepare and submit to the Mayor, the Council of the District of Columbia, and the public an annual report which shall include a description of the specific actions taken to implement this act and an evaluation of the Division's performance. The report shall include a full statistical analysis of case reports received, an evaluation of services offered, recommendations for

additional legislation or services needed to fulfill the purposes of this act and the comments submitted by the Mayor's Interagency Interdepartmental Committee on Abuse and Neglect. The 1st report shall be submitted not later than 1 year and 90 days after September 23, 1977.

(c) The Chief of the Division and the Director of the Department of Human Resources shall implement the Protection of Children from Exposure to Drug-related Activity Amendment Act of 1989. The Chief of the Division and the Director of the Department of Human Services shall provide the services authorized pursuant to this section to a child who is abused as a result of inadequate care, control, or subsistence due to exposure to drug-related activity. (1973 Ed., § 6-2133; Sept. 23, 1977, D.C. Law 2-22, title III, § 303, 24 DCR 3341; Mar. 15, 1990, D.C. Law 8-87, § 3(e), 37 DCR 50.)

Legislative history of Law 2-22. — See note to § 6-2101.

Legislative history of Law 8-87. — See note to § 6-2104.1.

References in text. — "This act," referred to throughout this section, is the Prevention of Child Abuse and Neglect Act of 1977, D.C. Law 2-22.

"Section 103 of this act", referred to in subsection (a)(1), is § 103 of D.C. Law 2-22.

The Department of Human Resources was replaced by the Department of Human Services pursuant to Reorganization Plan No. 2 of 1979, dated February 21, 1980.

The "Protection of Children from Exposure to Drug-related Activity Amendment Act of 1989", referred to in (c), is D.C. Law 8-87.

D.C. Law Review. — For article, "Combating unnecessary family separation: How to seek court-ordered housing for families in the District of Columbia neglect system," see 2 D.C. L. Rev. 25 (1993).

Cited in *LaShawn A. v. Dixon*, 762 F. Supp. 959 (D.D.C. 1991), modified, 990 F.2d 1319 (D.C. Cir. 1993); *In re T.B.*, 120 WLR 1089 (Super. Ct. 1992).

§ 6-2124. Services authorized; custodial placement; removal of child.

(a) When an investigation made pursuant to §§ 6-2102 and 6-2103 indicates that a child is an abused or neglected child and in need of services, the Chief of the Division is authorized to provide or secure any necessary services which may include:

- (1) Emergency financial aid;
- (2) Temporary 3rd-party placement with responsible neighbors or relatives for the child and his or her siblings: Provided, that the person with whom the child is placed shall not be considered an agent of the Department of Human Services;
- (3) Emergency caretaker(s) who enter the home and provide temporary care for the child and his or her siblings in appropriate cases, when the consent of the parent or other custodian cannot be obtained, notwithstanding the provisions of the Act of March 3, 1901, as amended (31 Stat. 1324);
- (4) The placement of homemakers in the home to maintain the child and his or her siblings or to assist the parent or other caretaker in discharging his or her responsibilities to the child;
- (5) Day care for the child and his or her siblings;
- (6) Counselling services for the child and his or her family;
- (7) Medical evaluation and/or emergency treatment of the child by a qualified physician; and

(8) Other appropriate services or resources available in the community including, but not limited to, parenting classes and family counseling.

(b) When an investigation indicates that a child has been left alone or with inadequate supervision and a 3rd-party placement cannot be made, the Division is authorized to make a temporary custodial placement of the child: Provided, that:

(1) Notice is left for the parent or custodian which shall state the procedure for reclaiming the child;

(2) Efforts continue to locate the parent;

(3) The child is returned forthwith upon the request of the parent or custodian, unless there is additional evidence of immediate danger to the child and police action is taken pursuant to § 16-2309(3) or (4); and

(4) A complaint alleging neglect is filed with the Superior Court of the District of Columbia:

(A) At the end of 5 days if the parent or custodian fails to claim the child within that time; or

(B) Immediately upon the discovery of additional evidence of immediate danger to the child.

(c) When an investigation made pursuant to § 6-2102 or 6-2103 indicates that a child is an abused or a neglected child and when it has been determined that the child cannot be adequately protected by any of the services set forth in subsection (a) or (b) of this section or by any other services, the Chief of the Division is authorized to:

(1) Remove the child with the consent of the parent, guardian, or other person acting in loco parentis;

(2) Request the Corporation Counsel of the District of Columbia to petition the Family Division of the Superior Court of the District of Columbia for a finding of neglect and, where appropriate, the removal of the child; and

(3) Request the police to remove the child when the consent of a parent, guardian or other custodian cannot be obtained and the need to protect the child does not allow sufficient time to obtain a court order. (1973 Ed., § 6-2134; Sept. 23, 1977, D.C. Law 2-22; title III, § 304, 24 DCR 3341; Mar. 16, 1995, D.C. Law 10-227, § 2(c), 42 DCR 4.)

Section references. — This section is referred to in §§ 6-2104, 6-2123, and 6-2125.

Effect of amendments. — D.C. Law 10-227 added “including but not limited to parenting classes and family counseling” at the end of (a)(8).

Legislative history of Law 2-22. — See note to § 6-2101.

Legislative history of Law 10-227. — See note to § 6-2107.

References in text. — “The Act of March 3, 1901,” referred to in subsection (a)(3), enacted a code of laws for the District of Columbia.

Cited in LaShawn A. v. Dixon, 762 F. Supp. 959 (D.D.C. 1991), modified, 990 F.2d 1319 (D.C. Cir. 1993), cert. denied, — U.S. —, 114 S. Ct. 691, 126 L. Ed 2d 659 (1994); In re T.B., 120 WLR 1089 (Super. Ct. 1992).

§ 6-2125. Medical treatment authorized.

When the Department of Human Services has physical custody of a child pursuant to subsection (b) or (c) of § 6-2124 or pursuant to § 16-2313 or 16-2320, it may:

(1) Authorize a medical and psychiatric evaluation and/or emergency medical, surgical, dental, or psychiatric treatment at any time; and

(2) Authorize non-emergency medical, surgical, dental or psychiatric treatment, or autopsy, when reasonable efforts to consult the parent have been made but a parent cannot be consulted. (1973 Ed., § 6-2135; Sept. 23, 1977, D.C. Law 2-22, title III, § 305, 24 DCR 3341.)

Legislative history of Law 2-22. — See note to § 6-2101.

References in text. — The Department of Human Resources was replaced by the Depart-

ment of Human Services pursuant to Reorganization Plan No. 2 of 1979, dated February 21, 1980.

§ 6-2126. Confidentiality of records and information.

(a) Information acquired by staff of the Social Rehabilitation Administration of the Department of Human Services which identifies individual children reported as or found to be abused or neglected or which identifies other members of their families or other persons or other individuals shall be considered confidential and may be released or divulged only for purposes relating to the identification of abuse or neglect, the identification of service needs or resources, the securing or provision of treatment or direct services for the child or individual identified.

(b) Persons or agencies who are not covered by confidentiality requirements comparable to those in subsection (a) of this section, to whom information is released pursuant to this section, § 6-2113, or § 6-2114 must sign a statement that they will not divulge such confidential information for purposes unrelated to the purposes of treatment, identification or evaluation. (1973 Ed., § 6-2136; Oct. 18, 1979, D.C. Law 3-29, § 2, 26 DCR 678.)

Legislative history of Law 3-29. — Law 3-29, the "Confidentiality and Disclosure of Records on Abused and Neglected Children Act of 1979," was introduced in Council and assigned Bill No. 3-159, which was referred to the Committee on Human Resources. The Bill was adopted on first and second readings on July 17, 1979 and July 31, 1979, respectively. Signed

by the Mayor on August 1, 1979, it was assigned Act No. 3-78 and transmitted to both Houses of Congress for its review.

References in text. — The Department of Human Resources was replaced by the Department of Human Services pursuant to Reorganization Plan No. 2 of 1979, dated February 21, 1980.

§ 6-2127. Unauthorized disclosure of records.

Whoever willfully discloses, receives, makes use of or knowingly permits the use of confidential information concerning a child or individual in violation of this act shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$1,000. A violation of this section shall be prosecuted by the Corporation Counsel of the District of Columbia. (1973 Ed., § 6-2137; Oct. 18, 1979, D.C. Law 3-29, § 2, 26 DCR 678.)

Legislative history of Law 3-29. — See note to § 6-2126.

References in text. — "This act," referred to

in the first sentence, is D.C. Law 3-29, as amended.

Subchapter IV. Child Abuse and Neglect Prevention Children's Trust Fund.

§ 6-2131. Definitions.

For the purposes of this subchapter, the term:

- (1) "Child" means a person under 18 years of age.
- (2) "Child abuse" means harm or threatened harm to a child's health or welfare by a person responsible for the child's health or welfare, which occurs through the intentional infliction of physical or emotional injury or an act of sexual abuse, which includes a violation of any provision of the Prevention of Child Abuse and Neglect Act of 1977 (D.C. Law 2-22).
- (3) "Child neglect" means harm to a child's health or welfare which occurs through the failure to provide adequate food, clothing, shelter, education, or medical care.
- (4) "Prevention program" means a program designed to prevent child abuse or child neglect including a community-based program that:
 - (A) Focuses on child abuse or child neglect;
 - (B) Focuses on public awareness;
 - (C) Focuses on prenatal care, perinatal bonding, child development, basic child care, care of children with special needs or coping with family stress;
 - (D) Provides aid to parents who potentially may abuse or neglect their children, child abuse or child neglect counseling, support groups for parents who potentially may abuse or neglect their children, and support groups for their children, or early identification of families in which there is a potential for child abuse or child neglect;
 - (E) Trains and places volunteers in programs that focus on child abuse or child neglect prevention; or
 - (F) Develops and makes available to the District of Columbia Board of Education curricula and educational material on basic child care and parenting skills, or trains educators. (Oct. 5, 1993, D.C. Law 10-56, § 2, 40 DCR 7222.)

Emergency act amendments. — For temporary addition of subchapter IV, see §§ 2-9 of the Child Abuse and Neglect Prevention Children's Trust Fund Emergency Act of 1993 (D.C. Act 10-87, August 4, 1993, 40 DCR 6067) and §§ 2-9 of the Child Abuse and Neglect Prevention Children's Trust Fund Congressional Recess Emergency Act of 1993 (D.C. Act 10-133, October 27, 1993, 40 DCR 7600).

Legislative history of Law 10-56. — D.C. Law 10-56, the "Child Abuse and Neglect Pre-

vention Children's Trust Fund Act of 1993" was introduced in Council and assigned Bill No. 10-114, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on July 13, 1993, and September 21, 1993, respectively. Signed by the Mayor on October 1, 1993, it was assigned Act No. 10-109 and transmitted to both Houses of Congress for its review. D.C. Law 10-56 became effective on November 20, 1993.

§ 6-2132. Establishment of the Child Abuse and Neglect Prevention Children's Trust Fund.

(a) There is established in the District of Columbia a private nonprofit corporation which shall be known as the Child Abuse and Neglect Prevention Children's Trust Fund ("Trust Fund"). The sole purpose of the Trust Fund is to encourage child abuse and child neglect prevention programs.

(b) The Trust Fund may accept appropriations from the District and shall accept gifts, bequests and grants from persons, organizations, corporations and foundations.

(c) The Trust Fund shall accept federal funds granted by Congress or Executive Order.

(d) All funds of the Trust Fund shall be held in trust by the Foundation for the National Capital Region ("Foundation"), a private nonprofit 501(c)(3) foundation whose Employer Identification Number is 23-7343119. In the event the Foundation is unable or unwilling to hold the funds, the Trust Fund shall designate an alternate trustee.

(e) Repealed.

(f) Until the total amount of assets in the Trust Fund exceeds \$5,000,000, not more than 75% of the funds contributed to the Trust Fund each year, plus the earnings credited to the Trust Fund during the previous year, shall be available for disbursement upon the authorization of the Board of Directors of the Trust Fund. After the Foundation or alternate trustee certifies that the assets in the Trust Fund exceed \$5,000,000, there shall be available for disbursement upon authorization of the Board of Directors, all earnings credited to the Trust Fund and other funds contributed to or received by the Trust Fund; provided, however, that the assets in the Trust Fund shall not be reduced below \$5,000,000.

(g) The Trust Fund shall supplement but not replace services provided by District agencies.

(h) The Trust Fund shall not provide funding to District government agencies. (Oct. 5, 1993, D.C. Law 10-56, § 3, 40 DCR 7222; Mar. 8, 1994, D.C. Law 10-75, § 7, 41 DCR 8072; June 28, 1994, D.C. Law 10-134, § 7, 41 DCR 2597.)

Effect of amendments. — D.C. Law 10-134 repealed (e).

Temporary amendments of section. — Section 7 of D.C. Law 10-75 repealed (e).

Section 8(b) of D.C. Law 10-75 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the South Africa Sanctions Repeal Act of 1993, whichever occurs first.

Emergency act amendments. — For temporary addition of subchapter, see notes to § 6-2131.

For temporary amendments of section, see § 7 of the South Africa Sanctions Emergency Repeal Act of 1993 (D.C. Act 10-127, October 25, 1993, 40 DCR 7583) and § 7 of the South Africa Sanctions Congressional Recess Emer-

gency Repeal Act of 1994 (D.C. Act 10-176, January 25, 1994, 41 DCR 512).

Legislative history of Law 10-56. — See note to § 6-2131.

Legislative history of Law 10-75. — D.C. Law 10-75, the "South Africa Sanctions Temporary Repeal Act of 1993," was introduced in Council and assigned Bill No. 10-417. The Bill was adopted on first and second readings on October 5, 1993, and November 2, 1993, respectively. Signed by the Mayor on November 4, 1993, it was assigned Act No. 10-142 and transmitted to both Houses of Congress for its review. D.C. Law 10-75 became effective March 8, 1994.

Legislative history of Law 10-134. — Law 10-134, the "South Africa Sanctions Repeal Act

of 1994," was introduced in Council and assigned Bill No. 10-427, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on March 1, 1994, and April 12,

1994, respectively. Signed by the Mayor on April 28, 1994, it was assigned Act No. 10-234 and transmitted to both Houses of Congress for its review. D.C. Law 10-134 became effective on June 28, 1994.

§ 6-2133. Establishment of Board of Directors.

(a) A self-perpetuating Board of Directors is established to manage the affairs of the Trust Fund. The Board of Directors shall have 15 members. The D.C. Treasurer, Director of the Department of Human Services and the Director of the Mayor's Youth Initiatives Office shall serve as members of the Board of Directors. The remaining 12 members shall have a demonstrated knowledge in the area of child abuse and child neglect prevention and shall reflect a diversity of gender and ethnicity. Each ward in the District shall be represented on the Board of Directors.

(b) The D.C. Treasurer, the Director of the Department of Human Services, and the Director of the Mayor's Youth Initiatives Office shall serve terms as members of the Board of Directors for the same duration as the terms of their office.

(c) The 12 initial nongovernmental members shall serve the following terms: 3 members shall serve 3 years; 5 members shall serve 2 years; and 4 members shall serve 1 year.

(d) The 12 initial nongovernmental members shall be appointed by resolution of the Council.

(e) In the event that 1 of the 12 initial nongovernmental members is unable to serve or is removed, the remaining members shall select a replacement member according to the representational requirements of subsection (a) of this section.

(f) The Board of Directors shall appoint nongovernmental replacement members so that subsequent Board of Directors meet the representational requirements of subsection (a) of this section and the bylaws adopted by the Board of Directors. A succeeding member shall serve the balance of the term of the member that he or she succeeds if the term is unexpired. A succeeding member who succeeds a member whose term has expired shall serve a term of 3 years. No member shall serve more than 2 consecutive terms whether partial or full.

(g) Members shall be compensated only for out-of-pocket expenses incurred from the accomplishment of their responsibilities as members of the Board of Directors.

(h) The Board of Directors shall elect a chairperson from among the members. The Board of Directors may elect other officers and form committees as it considers appropriate. (Oct. 5, 1993, D.C. Law 10-56, § 4, 40 DCR 7222.)

Emergency act amendments. — For temporary addition of subchapter, see notes to § 6-2131.

Legislative history of Law 10-56. — See note to § 6-2131.

§ 6-2134. Powers and responsibilities of the Board of Directors.

- (a) The Board of Directors shall:
- (1) Administer the Trust Fund;
 - (2) File such papers as may be required by the Recorder of Deeds of the District of Columbia;
 - (3) Have the power to adopt, amend, or repeal bylaws for operation of the Trust Fund;
 - (4) Remove a member by a $\frac{2}{3}$ rd vote of the remaining members of the Board of Directors;
 - (5) Meet not less than quarterly at a time to be determined;
 - (6) Assess service needs and gaps relative to child abuse and child neglect prevention programs in the District;
 - (7) Develop and implement program recommendations in order to address identified service needs;
 - (8) Develop and implement proposal solicitation and establish criteria for the awarding of grants to meet identified service needs;
 - (9) Review, approve, and monitor the expenditure of the Trust Fund and child abuse and child neglect prevention programs;
 - (10) Assist in providing information to the public about the purpose and work of the Trust Fund;
 - (11) Hire and monitor an executive director of the Trust Fund; and
 - (12) Invite comments and recommendations at least annually from interested child advocacy coalitions and community organizations to review the Trust Fund's program plans.

(b) Administrative expenses shall not exceed 10% of the funds available in the Trust Fund.

(c) One year after its original formation, the Board of Directors shall develop a District-wide plan for the distribution of funds from the Trust Fund. The plan shall be developed annually. The plan shall assure a distribution of funds to services that reach children in all geographic areas of the District. The plan shall be transmitted to the Mayor and Chairman of the Council. (Oct. 5, 1993, D.C. Law 10-56, § 5, 40 DCR 7222.)

Emergency act amendments. — For temporary addition of subchapter, see notes to § 6-2131.

Legislative history of Law 10-56. — See note to § 6-2131.

§ 6-2135. Service of process.

The Trust Fund shall maintain a designated agent to accept service of process for the Trust Fund. Notice to or service upon the agent is notice or service upon the Trust Fund. (Oct. 5, 1993, D.C. Law 10-56, § 6, 40 DCR 7222.)

Emergency act amendments. — For temporary addition of subchapter, see notes to § 6-2131.

Legislative history of Law 10-56. — See note to § 6-2131.

§ 6-2136. Corporate powers.

The Trust Fund may exercise those powers conferred upon a nonprofit corporation pursuant to Chapter 5 of Title 29. (Oct. 5, 1993, D.C. Law 10-56, § 7, 40 DCR 7222.)

Emergency act amendments. — For temporary addition of subchapter, see notes to § 6-2131. **Legislative history of Law 10-56.** — See note to § 6-2131.

§ 6-2137. Dissolution.

Except as otherwise provided in a contract or legacy transferring or loaning property to the Trust Fund, upon dissolution of the Trust Fund as a corporation, all remaining assets shall be transferred to the Mayor of the District of Columbia. The Mayor shall make every effort to use the assets for the prevention of child abuse and child neglect as provided in this subchapter. (Oct. 5, 1993, D.C. Law 10-56, § 8, 40 DCR 7222.)

Emergency act amendments. — For temporary addition of subchapter, see notes to § 6-2131. **Legislative history of Law 10-56.** — See note to § 6-2131.

§ 6-2138. Tax status.

The Trust Fund may engage in such activities that make it eligible for treatment as an organization described in § 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. § 501(c)(3)) which may be exempt from federal taxation under § 501(a) of the Internal Revenue Code (26 U.S.C. § 501(a)). (Oct. 5, 1993, D.C. Law 10-56, § 9, 40 DCR 7222.)

Emergency act amendments. — For temporary addition of subchapter, see notes to § 6-2131. **Legislative history of Law 10-56.** — See note to § 6-2131.

CHAPTER 22. PROGRAMS FOR THE AGING.

Subchapter I. General Provisions.

Sec.

6-2201. Purpose.

6-2202. Definitions.

Subchapter II. Office on Aging.

6-2211. Establishment.

6-2212. Executive Director — Appointment; compensation; staff.

6-2213. Same — Duties.

6-2214. Impact statements.

6-2215. Standards for grant and contract awards.

6-2216. Transfer of funds and positions from Division of Services to the Aging.

Subchapter III. Commission on Aging.

6-2221. Establishment.

6-2222. Composition; appointment.

6-2223. Qualifications.

6-2224. Term of office.

Sec.

6-2225. Vacancies.

6-2226. Rules of procedure.

6-2227. Chairperson.

6-2228. Compensation; expenses.

6-2229. Staff; technical assistance.

6-2230. Duties.

Subchapter IV. Volunteer Service Credit Program.

6-2241. Definitions.

6-2242. Establishment of pilot volunteer service credit program.

6-2243. Targeted services.

6-2244. Service credits.

6-2245. Service credit guarantee.

6-2246. Advisory committees.

6-2247. Demonstration projects.

6-2248. Status of volunteers; reimbursement.

6-2249. Qualified immunity.

6-2250. Rules.

6-2251. Reporting to Council.

*Subchapter I. General Provisions.***§ 6-2201. Purpose.**

It is the intent of the Council of the District of Columbia that the District government shall insure a full range of health, education, employment, and social services shall be available to the aged in the District of Columbia, and the planning and operation of such programs will be undertaken as a partnership of older citizens, families, community leaders, private agencies, and the District of Columbia government. (1973 Ed., § 6-1701; Oct. 29, 1975, D.C. Law 1-24, title I, § 101, 22 DCR 2456.)

Legislative history of Law 1-24. — Law 1-24, the "District of Columbia Act on the Aging," was introduced in Council and assigned Bill No. 1-106, which was referred to the Committee on Human Resources and Aging. The Bill was adopted on first and second readings on June 17, 1975 and July 1, 1975, respectively.

Signed by the Mayor on July 25, 1975, it was assigned Act No. 1-36 and transmitted to both Houses of Congress for its review.

Advisory Committee on Aging abolished. — The District of Columbia Advisory Committee on Aging was abolished by § 411 of D.C. Law 1-24.

§ 6-2202. Definitions.

- (1) "Office" means the Office on Aging created by § 6-2211.
- (2) "Director" means the Executive Director of the Office on Aging.
- (3) "Commission" means the Commission on the Aging created by § 6-2221.
- (4) "Aged" means a person 60 years of age or older.
- (5) "Services to the aged" means those services designed to provide assistance to the aged, including nutritional programs, transportation and legal services, health and financial assistance, employment and housing programs, recreational opportunities, and information, referral, and counseling services.

(1973 Ed., § 6-1702; Oct. 29, 1975, D.C. Law 1-24, title II, § 201, 22 DCR 2456.)

Legislative history of Law 1-24. — See note to § 6-2201.

Subchapter II. Office on Aging.

§ 6-2211. Establishment.

There is established an Office on Aging. The Office shall provide within the District government a single administrative unit, responsible to the Mayor, to administer the provisions of the Older Americans Act (P.L. 89-73, as amended), and such other programs as shall be delegated to it by the Mayor or the Council of the District of Columbia, and to promote the welfare of the aged. (1973 Ed., § 6-1711; Oct. 29, 1975, D.C. Law 1-24, title III, § 301, 22 DCR 2457; Oct. 17, 1981, D.C. Law 4-42, § 9(b)(1), 28 DCR 3425.)

Cross references. — As to review of and report on activities of Office on Aging by Commission on Aging, see § 6-2230.

Section references. — This section is referred to in §§ 1-603.1, 6-2202, 6-2216, and 6-3501.

Legislative history of Law 1-24. — See note to § 6-2201.

Legislative history of Law 4-42. — Law 4-42, the "Governmental Reorganization Procedures Act of 1981," was introduced in Council

and assigned Bill No. 4-197, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on June 16, 1981, and June 30, 1981, respectively. Signed by the Mayor on July 23, 1981, it was assigned Act No. 4-71 and transmitted to both Houses of Congress for its review.

References in text. — The "Older Americans Act" is codified at 42 U.S.C. § 3001 et seq.

§ 6-2212. Executive Director — Appointment; compensation; staff.

The Office shall be headed by an Executive Director, who shall be appointed by the Mayor with the advice and consent of the Council of the District of Columbia, from a list of not more than 3 names submitted to him by the Commission. The Director shall devote his full time to the duties of his office. His annual compensation shall be fixed in accordance with Chapter 51 of Title 5, United States Code (relating to the classification of government employees and related matters), but shall be not less than a GS-15, Step 1 or the equivalent compensation pursuant to the provisions of subchapter XII of Chapter 6 of Title 1. He shall have such staff as is approved in the current District government budget and federal grants, plus any temporary staff approved by the Office of Budget and Management Systems. (1973 Ed., § 6-1712; Oct. 29, 1975, D.C. Law 1-24, title III, § 302, 22 DCR 2457; Mar. 3, 1979, D.C. Law 2-139, § 3205(t), 25 DCR 5740.)

Cross references. — As to effective date of D.C. Law 2-139, see § 1-637.1.

As to submission by Commission on Aging of list of persons recommended for appointment to

position of Director of Office on Aging, see § 6-2230.

Section references. — This section is referred to in §§ 1-637.1 and 6-3501.

Legislative history of Law 1-24. — See note to § 6-2201.

Legislative history of Law 2-139. — Law 2-139, the "District of Columbia Government Comprehensive Merit Personnel Act of 1978," was introduced in Council and assigned Bill No. 2-10, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 17, 1978, and October 31, 1978, respectively. Signed by the Mayor on November 22, 1978, it was assigned Act No. 2-300 and trans-

mitted to both Houses of Congress for its review.

References in text. — "GS-15, Step 1," referred to in the second sentence, is contained in the General Schedule, which is set out following § 5332 of Title 5, United States Code.

Delegation of Authority Under D.C. Law 7-218, the "District of Columbia Long-Term Care Ombudsman Program Act of 1988." — See Mayor's Order 89-86, April 28, 1989.

§ 6-2213. Same — Duties.

In order to carry out the purposes of this chapter, the Director shall:

- (1) Serve as an advocate for the aged in the District of Columbia;
- (2) Contract with, and make grants to, public and private agencies using Older Americans Act funds, other federal funds received by the Office, and District government appropriated funds;
- (3) Provide information and technical assistance with respect to programs and services for the aged to the Mayor, the Commission on Aging, the Council of the District of Columbia, other District government agencies and departments, and the community. This shall include, when necessary, contracting for consultant assistance outside the District government;
- (4) Consider the advice and recommendations of the Commission in carrying out his responsibilities under this chapter;
- (5) File an annual report on the operation of the Office and an analysis of the needs of the aged with the Mayor and the Council of the District of Columbia, and make it available to the public;
- (6) Publish a directory of services available to the aged through the District government and including, to the maximum extent possible, sources of nonpublic assistance and programs for the aged in the District of Columbia. The directory shall be revised at least every 2 years;
- (7) Identify areas of need for service or improvement of service and bring them to the attention of the Mayor and Commission, with suggestions for meeting such needs, including conducting or funding research and demonstration projects to test such suggestions;
- (8) Carry responsibility for assuring necessary control, evaluation, audit, and reporting on programs funded through the Office;
- (9) Prepare in timely fashion the state plan required under the Older Americans Act and forward it to the Commission for comment and Mayor for approval;
- (10) Develop, with the advice of the Commission, a 5-year plan of policies, programs, services and activities to benefit aged residents of the District of Columbia. Such plan shall be reviewed and updated annually;
- (11) Review and comment on proposed District and federal legislation, regulations, policies, and programs and make policy recommendations on issues affecting the health, safety, and welfare of the aged. (1973 Ed., § 6-1713; Oct. 29, 1975, D.C. Law 1-24, title III, § 303, 22 DCR 2457; Sept. 14, 1976, D.C. Law 1-83, § 2, 23 DCR 2462.)

Section references. — This section is referred to in § 6-2229.

Legislative history of Law 1-24. — See note to § 6-2201.

Legislative history of Law 1-83. — Law 1-83, the “District of Columbia Aging Act Amendments,” was introduced in Council and assigned Bill No. 1-249, which was referred to the Committee on Human Resources and Ag-

ing. The Bill was adopted on first and second readings on May 6, 1976 and May 20, 1976, respectively. Signed by the Mayor on June 18, 1976, it was assigned Act No. 1-132 and transmitted to both Houses of Congress for its review.

References in text. — The “Older Americans Act,” referred to in paragraphs (2) and (9), is codified at 42 U.S.C. § 3001 et seq.

§ 6-2214. Impact statements.

All heads of departments and agencies of the District government are required at least 30 days prior to implementation of any proposed policies or programs that will have a major impact on the aged to submit such proposals to the Director for comment. If the impact of the proposal is determined by the Director to be adverse, he shall file a statement of this finding with the Mayor, the Commission, and the Council of the District of Columbia, as well as the originating department or agency. (1973 Ed., § 6-1714; Oct. 29, 1975, D.C. Law 1-24, title III, § 304, 22 DCR 2459.)

Legislative history of Law 1-24. — See note to § 6-2201.

§ 6-2215. Standards for grant and contract awards.

After consultation with the Commission on Aging established by § 6-2221 the Director shall develop and publish the standards that the Office will use in making decisions on the award of grants and contracts. (1973 Ed., § 6-1715; Oct. 29, 1975, D.C. Law 1-24, title III, § 305, 22 DCR 2459.)

Legislative history of Law 1-24. — See note to § 6-2201.

§ 6-2216. Transfer of funds and positions from Division of Services to the Aging.

The Division of Services to the Aging presently located within the Department of Human Resources, and all positions and unexpended funds presently allocated to this Division are hereby transferred to the new Office created under § 6-2211. (1973 Ed., § 6-1716; Oct. 29, 1975, D.C. Law 1-24, title III, § 306, 22 DCR 2459.)

Legislative history of Law 1-24. — See note to § 6-2201.

Subchapter III. Commission on Aging.

§ 6-2221. Establishment.

There is hereby established a Commission on Aging to advise the Mayor, the Director of the Office on Aging, the Council of the District of Columbia, and the

public concerning the views and needs of the aged in the District of Columbia. (1973 Ed., § 6-1721; Oct. 29, 1975, D.C. Law 1-24, title IV, § 401, 22 DCR 2460; Oct. 17, 1981, D.C. Law 4-42, § 9(b)(2), 28 DCR 3425.)

Section references. — This section is referred to in §§ 6-2202 and 6-2215.

Legislative history of Law 1-24. — See note to § 6-2201.

Legislative history of Law 4-42. — Law 4-42, the "Governmental Reorganization Procedures Act of 1981," was introduced in Council and assigned Bill No. 4-197, which was referred

to the Committee on Government Operations. The Bill was adopted on first and second readings on June 16, 1981, and June 30, 1981, respectively. Signed by the Mayor on July 23, 1981, it was assigned Act No. 4-71 and transmitted to both Houses of Congress for its review.

§ 6-2222. Composition; appointment.

The Commission shall consist of 15 public (voting) members appointed by the Mayor, with the advice and consent of the Council of the District of Columbia. At least one-half of the membership of the Commission shall consist of actual consumers of services under this program, including low income and minority older persons, at least in proportion to the number of minority older persons in the District of Columbia. There shall also be the following ex officio members: The Directors of the Department of Human Services, the Department of Housing and Community Development, the Department of Recreation, the Department of Transportation, the Department of Employment Services, the Public Library, the Chief of the Metropolitan Police Department (or the Director or Chief of such successor agencies), and a member of the Council of the District of Columbia. (1973 Ed., § 6-1722; Oct. 29, 1975, D.C. Law 1-24, title IV, § 402, 22 DCR 2460.)

Legislative history of Law 1-24. — See note to § 6-2201.

References in text. — The Department of Human Resources was replaced by the Department of Human Services pursuant to Reorganization Plan No. 2 of 1979, dated February 21, 1980.

The Office of Housing and Community Development was replaced by the Department of Housing and Community Development pursuant to Reorganization Plan No. 3 of 1975, dated July 3, 1975.

The Department of Highways and Traffic was replaced by the Department of Transportation pursuant to Reorganization Plan No. 2 of 1975, dated July 24, 1975.

The Office of Manpower Administration was replaced by the Department of Employment Services pursuant to Reorganization Plan No. 1 of 1980, dated April 17, 1980.

The functions of the Department of Transportation were transferred to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984.

§ 6-2223. Qualifications.

Members shall be appointed with due consideration for fair geographical distribution, representation from organizations of older persons, public and voluntary agencies concerned with the aged, and members of the general public who have given evidence of particular dedication to and understanding of the needs of the aged. At least 8 members shall be 60 years of age or over, and all must be residents of the District of Columbia. (1973 Ed., § 6-1723; Oct. 29, 1975, D.C. Law 1-24, title IV, § 403, 22 DCR 2460.)

Legislative history of Law 1-24. — See note to § 6-2201.

§ 6-2224. Term of office.

Members of the Commission shall serve terms not to exceed 3 years, which shall regularly commence on October 29th in the year of appointment and expire on October 28th 3 years later. The terms shall be staggered so that 5 terms expire each year on October 28th. Members may be reappointed but may not serve more than 2 consecutive terms. (1973 Ed., § 6-1724; Oct. 29, 1975, D.C. Law 1-24, title IV, § 404, 22 DCR 2461; Mar. 10, 1982, D.C. Law 4-73, § 4(c), 28 DCR 5276.)

Legislative history of Law 1-24. — See note to § 6-2201.

Legislative history of Law 4-73. — See note § 47-850.

§ 6-2225. Vacancies.

When a vacancy develops on the Commission, the Mayor with the advice and consent of the Council of the District of Columbia may appoint a successor to fill the unexpired portion of the term. A member may continue to serve beyond the expiration date of the member's term until a successor is duly qualified. If within 30 calendar days of development of a vacancy on the Commission the Mayor fails to transmit to the Council of the District of Columbia a nomination for that vacancy, the Council of the District of Columbia may make the appointment. If within 60 calendar days of submission of a nomination for the Commission the Council of the District of Columbia fails to act, the nomination shall be deemed confirmed. (1973 Ed., § 6-1725; Oct. 29, 1975, D.C. Law 1-24, title IV, § 405, 22 DCR 2461; Sept. 29, 1988, D.C. Law § 7-152, § 2, 35 DCR 5704.)

Legislative history of Law 1-24. — See note to § 6-2201.

Legislative history of Law 7-152. — Law 7-152, the "District of Columbia Act on the Aging Amendment Act of 1988," was introduced in Council and assigned Bill No. 7-363, which was referred to the Committee on Human Ser-

vices. The Bill was adopted on first and second readings on June 28, 1988 and July 12, 1988, respectively. Signed by the Mayor on July 15, 1988, it was assigned Act No. 7-207 and transmitted to both Houses of Congress for its review.

§ 6-2226. Rules of procedure.

The Commission shall develop its own rules of procedure, except they shall provide that the Commission shall meet at least every other month. (1973 Ed., § 6-1726; Oct. 29, 1975, D.C. Law 1-24, title IV, § 406, 22 DCR 2461.)

Legislative history of Law 1-24. — See note to § 6-2201.

§ 6-2227. Chairperson.

The Commission shall select its own Chairperson, by vote. (1973 Ed., § 6-1727; Oct. 29, 1975, D.C. Law 1-24, title IV, § 407, 22 DCR 2461.)

Legislative history of Law 1-24. — See note to § 6-2201.

§ 6-2228. Compensation; expenses.

All members shall serve without compensation, but expenses incurred by the Commission as a whole, or by its individual members, when duly authorized, will become an obligation against appropriate District government and federal funds designated for that purpose. (1973 Ed., § 6-1728; Oct. 29, 1975, D.C. Law 1-24, title IV, § 408, 22 DCR 2462.)

Legislative history of Law 1-24. — See note to § 6-2201.

§ 6-2229. Staff; technical assistance.

Necessary staff services shall be supplied in accordance with positions and funding approved in the current District government budget. In addition, the Director of the Office on Aging shall provide information and technical assistance as required under § 6-2213. (1973 Ed., § 6-1729; Oct. 29, 1975, D.C. Law 1-24, title IV, § 409, 22 DCR 2462.)

Legislative history of Law 1-24. — See note to § 6-2201.

§ 6-2230. Duties.

The Commission on Aging shall:

- (1) Serve as an advocate for older persons in the District of Columbia;
- (2) Review and submit to the Mayor, the Council of the District of Columbia, and the Office on Aging, an annual report including comments on the analysis of the needs of the aged in the District of Columbia made in the report of the Director;
- (3) Advise the Director on cooperation with federal, state, and private agencies concerned with activities pertaining to the aged;
- (4) Review and comment on the annual state plan required under the Older Americans Act. The statement of the Commission shall be transmitted to the Department of Health and Human Services with the plan;
- (5) Develop a list of not more than 3 persons the Commission recommends for the position of Director of the Office on Aging, whenever that position is vacant, and submit that list to the Mayor;
- (6) Conduct or participate in public hearings and other forums to determine views of older persons and other members of the public on matters affecting the health, safety and welfare of the aged in the District of Columbia;
- (7) Bring to the attention of the Mayor and the Office on Aging cases of neglect and abuse of the aged and incidents of bias against the aged in the administration of the laws of the District of Columbia;
- (8) Review and comment on the Director's review of proposed District and federal legislation, regulations, policies and programs, and comment on the

Director's policy recommendations on issues affecting the health, safety, and welfare of the aged;

(9) Provide a continuing review of the activities of the Office on Aging and issue reports thereon at least annually. (1973 Ed., § 6-1730; Oct. 29, 1975, D.C. Law 1-24, title IV, § 410, 22 DCR 2462; Sept. 14, 1976, D.C. Law 1-83, § 3, 23 DCR 2462.)

Legislative history of Law 1-24. — See note to § 6-2201.

Legislative history of Law 1-83. — See note to § 6-2213.

References in text. — The Department of Health, Education and Welfare was replaced by

the Department of Health and Human Services pursuant to the Act of October 17, 1979, 93 Stat. 675, Pub. L. 96-88, § 509.

The "Older Americans Act," referred to in paragraph (4), is codified at 42 U.S.C. § 3001 et seq.

Subchapter IV. Volunteer Service Credit Program.

§ 6-2241. Definitions.

For the purposes of this subchapter, the term:

- (1) "District" means the District of Columbia.
- (2) "Eligible person" means an individual who is 60 years of age or older or is mentally or physically ill, disabled, or infirm.
- (3) "Service credit" means the unit of exchange upon which the volunteer service credit program operates.
- (4) "Sponsor" means a nonprofit organization or a consortium of nonprofit organizations that receives and dispenses service credits on behalf of eligible persons and is designated by the Mayor to perform the administrative tasks necessary to implement this subchapter.
- (5) "Targeted service" means a task for which service credits may be earned when performed by a volunteer for an eligible person.
- (6) "Volunteer" means an individual who earns service credits by:
 - (A) Providing targeted services to an eligible person not related to him or her by blood, marriage, guardianship, or adoption;
 - (B) Providing services under a demonstration project;
 - (C) Participating in pre-service or in-service training under the volunteer service credit program or a demonstration project; or
 - (D) Performing administrative tasks in direct support of the volunteer service credit program or a demonstration project. (Sept. 13, 1986, D.C. Law 6-143, § 2, 33 DCR 4372.)

Section references. — This section is referred to in § 6-2247.

Legislative history of Law 6-143. — Law 6-143, the "Volunteer Service Credit Program Act of 1986," was introduced in Council and assigned Bill No. 6-282, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on

June 10, 1986 and June 24, 1986, respectively. Signed by the Mayor on July 8, 1986, it was assigned Act No. 6-185 and transmitted to both Houses of Congress for its review.

Delegation of authority pursuant to Law 6-143. — See Mayor's Order 87-140, June 16, 1987.

§ 6-2242. Establishment of pilot volunteer service credit program.

(a) Within 8 months after September 13, 1986, the Mayor shall establish a 3-year pilot volunteer service credit program ("program") through which individuals may volunteer targeted services and in return earn service credits that may be subsequently exchanged for targeted services. To implement the program, the Mayor may award grants and contracts to approved sponsors. The Mayor shall widely publicize a description of the program and a contact telephone number and address for those who may wish to participate.

(b)(1) The Mayor shall ensure that the District government or a sponsor maintains a computerized, District-wide register containing:

(A) The names of participating volunteers, services for which they are available, and any other personal information relevant to the program;

(B) An accounting system with the capacity to make available to the Mayor, each sponsor, and each volunteer a monthly balance of service credits earned and used; and

(C) Any other data that may be needed to monitor and administer the program and any demonstration projects undertaken pursuant to § 6-2247.

(2) The register required by this subsection shall be used solely to match volunteers with eligible persons and to accomplish other tasks consistent with the purposes of this subchapter. (Sept. 13, 1986, D.C. Law 6-143, § 3, 33 DCR 4372.)

Legislative history of Law 6-143. — See note to § 6-2241.

§ 6-2243. Targeted services.

Targeted services shall consist of those tasks that the Mayor has determined will foster the independence, self-sufficiency, and noninstitutionalized living of eligible persons and shall fall within the following categories:

(1) Those tasks, such as respite care, personal grooming, and meal preparation, that, when performed in the home, address the personal care needs of an eligible person;

(2) Those tasks, such as light housekeeping, heavy cleaning, and minor repairs, that, when performed in or around the home, address the environmental needs of an eligible person;

(3) Those tasks, such as exercise and recreational therapy, that address the physical or rehabilitative needs of an eligible person; and

(4) Those tasks, such as transportation and escort, that address the ability of an eligible person to function outside the home. (Sept. 13, 1986, D.C. Law 6-143, § 4, 33 DCR 4372.)

Legislative history of Law 6-143. — See note to § 6-2241.

§ 6-2244. Service credits.

(a) To initiate the program, the Mayor shall establish a pool of service credits to be awarded to eligible persons who are in need of targeted services. The Mayor may award credits to eligible persons directly from this pool or may distribute all or part of these credits to sponsors who shall in turn be authorized to award them. The awarding of credits to eligible persons shall be commensurate with the availability of volunteers.

(b) In addition to the pool of service credits established under subsection (a) of this section, a sponsor may, with the prior written approval of the Mayor, establish its own pool of service credits to be awarded to eligible persons. In order to receive this approval, a sponsor shall satisfy the Mayor that it has resources and contingency plans sufficient to meet the obligations imposed by § 6-2245.

(c)(1) Volunteers who provide targeted services shall earn 1 service credit for each hour of targeted services provided.

(2) If authorized by the Mayor, volunteers may also earn service credits for the completion of pre-service and in-service training and for the performance of administrative tasks in direct support of the program. Service credits earned in this manner shall be computed at a rate of 1 credit for every 2 hours of training or administrative service.

(d)(1) A volunteer who has service credits may transfer all or part of those credits, either directly or through a sponsor, to an eligible person. Credits thus transferred may not be retransferred.

(2) A volunteer who has service credits may transfer all or part of those credits to the Mayor or a sponsor for the purpose of replenishing a pool of service credits established under subsection (a) or (b) of this section.

(e) Except as otherwise provided by § 6-2245 or the rules issued by the Mayor under § 6-2250, an eligible person may at any time exchange service credits that he or she has earned, received by transfer, or been awarded for an equal number of hours of any targeted service. The Mayor or a sponsor shall determine whether a requested service is a targeted service and whether the requestor is an eligible person. (Sept. 13, 1986, D.C. Law 6-143, § 5, 33 DCR 4372.)

Section references. — This section is referred to in § 6-2245.

Legislative history of Law 6-143. — See note to § 6-2241.

§ 6-2245. Service credit guarantee.

(a) To ensure that outstanding service credits are promptly honored when exchanged for targeted services, the Mayor and each sponsor shall develop contingency plans and engage in diligent volunteer recruitment. Except as otherwise provided in subsections (b) and (c) of this section, the Mayor shall guarantee all outstanding credits from the pool of service credits established under § 6-2244(a), and a sponsor shall guarantee all outstanding credits from any pool of service credits it has established under § 6-2244(b). Under these guarantees the Mayor or a sponsor shall ensure the provision of a targeted

service, even if a volunteer is unavailable, within 10 days after an eligible person with service credits requests that service.

(b) If the program expires or is terminated, the Mayor shall promptly give written notice to all sponsors and persons known to have outstanding credits from the pool of service credits established under § 6-2244(a). Each sponsor shall promptly give written notice of the expiration or termination to all persons known to have outstanding credits from any pool of service credits it has established under § 6-2244(b). The guarantees required by subsection (a) of this section shall cover all requests for targeted services made within 6 months after written notice is given under this subsection.

(c) Service credit guarantees established by this section shall not apply to those requested services that are required by District law to be performed by licensed individuals. (Sept. 13, 1986, D.C. Law 6-143, § 6, 33 DCR 4372.)

Section references. — This section is referred to in §§ 6-2244 and 6-2247.

Legislative history of Law 6-143. — See note to § 6-2241.

§ 6-2246. Advisory committees.

Each sponsor shall have an advisory committee composed of persons skilled in the provision of targeted services and persons who represent or advocate the interests of eligible persons. An advisory committee shall monitor the sponsor's compliance with program requirements, make recommendations to the sponsor on program implementation, and carry out any other program-related tasks that the Mayor deems appropriate. (Sept. 13, 1986, D.C. Law 6-143, § 7, 33 DCR 4372.)

Legislative history of Law 6-143. — See note to § 6-2241.

§ 6-2247. Demonstration projects.

In addition to the volunteer service credit program, the Mayor may establish service credit demonstration projects, such as an intergenerational service program involving recipients who would not otherwise qualify as "eligible persons" under § 6-2241(2). Services provided through these demonstration projects shall earn service credits but shall not be covered by the provisions of § 6-2245. (Sept. 13, 1986, D.C. Law 6-143, § 8, 33 DCR 4372.)

Section references. — This section is referred to in §§ 6-2242 and 6-2251.

Legislative history of Law 6-143. — See note to § 6-2241.

§ 6-2248. Status of volunteers; reimbursement.

Volunteers shall not, by virtue of their participation in the program or a demonstration project, be entitled to monetary compensation or considered for any purpose to be employees or agents of either the District or a sponsor. Sponsors may reimburse volunteers for necessary expenses incident to their provision of targeted or demonstration project services, attendance at pre-service or in-service training, or performance of administrative tasks in direct

support of the program or demonstration project. (Sept. 13, 1986, D.C. Law 6-143, § 9, 33 DCR 4372.)

Legislative history of Law 6-143. — See note to § 6-2241.

§ 6-2249. Qualified immunity.

With respect to their participation in the program or a demonstration project, the District government and its agencies, officials, and employees and sponsors and their advisory committees, officials, and employees shall be immune from civil or criminal liability if they have acted in good faith. This immunity shall not apply to volunteers. (Sept. 13, 1986, D.C. Law 6-143, § 10, 33 DCR 4372.)

Legislative history of Law 6-143. — See note to § 6-2241.

§ 6-2250. Rules.

The Mayor shall, within 8 months after September 13, 1986, and pursuant to subchapter I of Chapter 15 of Title 1, issue all rules necessary to carry out the purposes of this subchapter. These rules may include, but shall not necessarily be limited to, standards and procedures with respect to the following:

- (1) Volunteer qualifications, screening, pre-service and in-service training, monitoring, and termination;
- (2) Minimum liability and accident insurance for volunteers;
- (3) Sponsor qualifications;
- (4) The awarding of service credits;
- (5) Minimum hours that a volunteer must be available;
- (6) Weekly and annual limits on the number of service credits a volunteer may earn;
- (7) The delayed vesting of or ability to use service credits earned for pre-service training or the performance of administrative tasks;
- (8) Mayoral and sponsor notification of service credit transfers;
- (9) Contingency planning and volunteer reserves;
- (10) Program evaluation and the responsibilities of sponsor advisory committees; and
- (11) Demonstration projects. (Sept. 13, 1986, D.C. Law 6-143, § 11, 33 DCR 4372.)

Section references. — This section is referred to in § 6-2244.

Legislative history of Law 6-143. — See note to § 6-2241.

§ 6-2251. Reporting to Council.

The Mayor shall prepare and submit to the Council annual reports on the volunteer service credit program and any demonstration projects established under § 6-2247. These reports shall at a minimum include:

(1) A description of the participating population, including the number or persons served and the services provided;

(2) The number of service credits outstanding at the conclusion of the reporting period;

(3) Program costs, including the cost to the District government of honoring service credits when volunteers have been unavailable;

(4) A description of any positive or negative effects on other volunteer activities;

(5) A program evaluation, including an assessment of the quality of services provided, participant satisfaction, and the need to increase or decrease the categories of targeted services or the hours of service availability; and

(6) Recommendations regarding continuation of the program or amendments to this subchapter. (Sept. 13, 1986, D.C. Law 6-143, § 12, 33 DCR 4372.)

Legislative history of Law 6-143. — See note to § 6-2241.

CHAPTER 23. FIREARMS CONTROL.

Subchapter I. General Provisions.

Sec.

- 6-2301. Findings and purpose.
- 6-2302. Definitions.

Subchapter II. Firearms and Destructive Devices.

- 6-2311. Registration requirements.
- 6-2312. Registration of certain firearms prohibited.
- 6-2313. Qualifications for registration; information required for registration.
- 6-2314. Fingerprints and photographs of applicants; application in person required.
- 6-2315. Application signed under oath; fees.
- 6-2316. Time for filing registration applications.
- 6-2317. Issuance of registration certificate; time period; corrections.
- 6-2318. Duties of registrants.
- 6-2319. Revocation of registration certificate.
- 6-2320. Procedure for denial and revocation of registration certificate.
- 6-2321. Information prohibited from use as evidence in criminal proceedings.
- 6-2322. Definition.
- 6-2323. Possession of self-defense sprays.
- 6-2324. Registration of self-defense sprays.

Subchapter III. Estates Containing Firearms.

- 6-2331. Rights and responsibilities of executors and administrators.

Subchapter IV. Licensing of Firearms Businesses.

- 6-2341. Manufacture of firearms, destructive devices or ammunition prohibited; requirement for dealer's license.
- 6-2342. Qualifications for dealer's license; application; fee.
- 6-2343. Issuance of dealer's license; time period; corrections.
- 6-2344. Duties of licensed dealers; records required.
- 6-2345. Revocation of dealer's license.
- 6-2346. Procedure for denial and revocation of dealer's license.
- 6-2347. Display of firearms or ammunition by dealers; security; employees of dealers.

Sec.

- 6-2348. Identification number on firearm required before sale.
- 6-2349. Certain information obtained from or retained by dealers not to be used as evidence in criminal proceedings.

Subchapter V. Sale and Transfer of Firearms, Destructive Devices, and Ammunition.

- 6-2351. Sales and transfers prohibited.
- 6-2352. Permissible sales and transfers.

Subchapter VI. Possession of Ammunition.

- 6-2361. Persons permitted to possess ammunition.

Subchapter VII. Miscellaneous Provisions.

- 6-2371. Security mortgages, deposits, or pawns with firearms, destructive devices, or ammunition prohibited; loan or rental of firearms, destructive devices, or ammunition prohibited.
- 6-2372. Firearms required to be unloaded and disassembled or locked.
- 6-2373. Firing ranges.
- 6-2374. False information; forgery or alteration.
- 6-2375. Voluntary surrender of firearms, destructive devices, or ammunition; immunity from prosecution; determination of evidentiary value of firearm.
- 6-2376. Penalties.
- 6-2377. Public education program.
- 6-2378. Construction of chapter.
- 6-2379. Applicability of District of Columbia Administrative Procedure Act.
- 6-2380. Severability.

Subchapter VIII. Illegal Firearm Sale and Distribution; Strict Liability.

- 6-2381. Definitions.
- 6-2382. Liability.
- 6-2383. Exemptions.
- 6-2384. Firearms Bounty Fund.

Subchapter IX. Assault Weapons Manufacturing Strict Liability.

- 6-2391. Definitions.
- 6-2392. Liability.
- 6-2393. Exemptions.

*Subchapter I. General Provisions.***§ 6-2301. Findings and purpose.**

The Council of the District of Columbia finds that in order to promote the health, safety and welfare of the people of the District of Columbia it is necessary to:

- (1) Require the registration of all firearms that are owned by private citizens;
- (2) Limit the types of weapons persons may lawfully possess;
- (3) Assure that only qualified persons are allowed to possess firearms;
- (4) Regulate deadly weapons dealers; and
- (5) Make it more difficult for firearms, destructive devices, and ammunition to move in illicit commerce within the District of Columbia. (1973 Ed., § 6-1801; Sept. 24, 1976, D.C. Law 1-85, § 2, 23 DCR 2464.)

Legislative history of Law 1-85. — Law 1-85, the "Firearms Control Regulations Act of 1975," was introduced in Council and assigned Bill No. 1-164, which was referred to the Committee on the Judiciary and the Committee on Criminal Law. The Bill was adopted on first, amended first, and second readings, and reconsideration of second reading, on May 3, 1976, May 18, 1976, June 15, 1976, and June 29, 1976, respectively. Signed by the Mayor on July 23, 1976, it was assigned Act No. 1-142 and transmitted to both Houses of Congress for its review.

This chapter is not unconstitutionally vague. *McIntosh v. Washington*, App. D.C., 395 A.2d 744 (1978).

Purpose of chapter. — Enacted as a comprehensive regulatory scheme for control of the use and sale of firearms in the District of Columbia, the purpose of this chapter is to freeze the handgun population within the District by expanding and strengthening preexisting firearm registration standards and to prescribe minor criminal penalties for the violation of its provisions. *McIntosh v. Washington*, App. D.C., 395 A.2d 744 (1978).

The legislative purpose of the Firearms Control Regulations Act of 1975 is to restrict private ownership of firearms to those who have a legitimate use for them, and to create an effective system for tracking registrable firearms. *United States v. Smith*, 118 WLR 2277 (Super. Ct. 1990).

Nature of chapter. — This chapter sanctions the ownership of certain limited types of firearms subject to strict registration and transfer provisions. *Timus v. United States*, App. D.C., 406 A.2d 1269 (1979).

The provisions of the Firearms Control Regulations Act were intended primarily as regulatory measures adopted pursuant to the District's local "police power," as distinguished

from alterations of the existing criminal code. *Townsend v. United States*, App. D.C., 559 A.2d 1319 (1989).

Focus of chapter. — It is absolutely clear from §§ 6-2311, 6-2313, 6-2323, 6-2361 and 6-2375 and the language and phrasing of other provisions of this Act, the Firearms Control Regulations Act of 1975, that the Act focuses equally, if not more, on the person than on the firearm. This dual emphasis fully comports with the purpose of the Act to freeze the handgun population within the District of Columbia by expanding and strengthening the then pre-existing firearm registration standards and to prescribe criminal penalties for the violation of its provisions. *District of Columbia v. Rowan*, 116 WLR 2353 (Super. Ct. 1988).

Firearms control law valid. — The validity of this chapter can be sustained under the District of Columbia Council's newly conferred power set forth in § 1-227(a) of the home rule statute notwithstanding the limitation contained in § 1-233(a)(9), which is merely a time constraint on the Council's authority to make changes, modifications or amendments in local criminal statutes until such time as a local law revision commission could make a complete reevaluation and revision of the District's Criminal Code. *McIntosh v. Washington*, App. D.C., 395 A.2d 744 (1978).

The Firearms Control Regulations Act (§ 6-2301 et seq.) constitutes a legitimate exercise of the authority vested in the District of Columbia Council by § 1-321. *McIntosh v. Washington*, App. D.C., 395 A.2d 744 (1978).

And does not conflict with Title 22. — No direct and positive conflict is apparent between the Firearms Control Regulations Act of 1975 (§ 6-2301 et seq.) and Chapter 32 of Title 22, which regulates weapons. *McIntosh v. Washington*, App. D.C., 395 A.2d 744 (1978).

Act repeals not Code sections but regulations. — Section 708 of the Firearms Control

Regulations Act of 1975 makes explicit the Council's intention to repeal not part of Title 22 of the District of Columbia Code, but rather those police regulations which have historically established the gun control framework for the District. *McIntosh v. Washington*, App. D.C., 395 A.2d 744 (1979).

Exercise of police power. — The Firearms Control Regulations Act constitutes an exercise of the police power of the Council of the District of Columbia. *Fesjian v. Jefferson*, App. D.C., 399 A.2d 861 (1979).

In passing the Firearms Control Regulations Act of 1975, the Council acknowledged that possession of some firearms by citizens is legiti-

mate, but its overriding concern was to limit and control such possession. *Timus v. United States*, App. D.C., 406 A.2d 1269 (1979).

Cited in *Logan v. United States*, App. D.C., 402 A.2d 822 (1979); *Kuhn v. Cissel*, App. D.C., 409 A.2d 182 (1979); *Smith v. District of Columbia*, App. D.C., 436 A.2d 53 (1981); *Romero v. National Rifle Ass'n of Am.*, 749 F.2d 77 (D.C. Cir. 1984); *Delahanty v. Hinckley*, 686 F. Supp. 920 (D.D.C. 1986), *aff'd*, 900 F.2d 368 (D.C. Cir. 1990); *Ford v. Turner*, App. D.C., 531 A.2d 233 (1987); *United States v. Duncan*, 115 WLR 2517 (Super. Ct. 1987); *Delahanty v. Hinckley*, 845 F.2d 1069 (D.C. Cir. 1988).

§ 6-2302. Definitions.

As used in this chapter the term:

(1) "Acts of Congress" means:

(A) Chapter 32 of Title 22;

(B) Omnibus Crime Control and Safe Streets Act of 1968, as amended (Title VII, Unlawful Possession or Receipt of Firearms (82 Stat. 1236; 18 U.S.C. Appendix)); and

(C) An Act to Amend Title 18, United States Code, To Provide for Better Control of the Interstate Traffic in Firearms Act of 1968 (82 Stat. 1213; 18 U.S.C. § 921 et seq.).

(2) "Ammunition" means cartridge cases, shells, projectiles (including shot), primers, bullets (including restricted pistol bullets), propellant powder, or other devices or materials designed, redesigned, or intended for use in a firearm or destructive device.

(3) "Antique firearm" means:

(A) Any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898; and

(B) Any replica of any firearm described in subparagraph (A) if such replica:

(i) Is not designed or redesigned for using rim-fire or conventional center-fire fixed ammunition; or

(ii) Uses rim-fire or conventional ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.

(4) "Chief" means the Chief of Police of the Metropolitan Police Department of the District of Columbia or his designated agent.

(5) "Crime of violence" means a crime of violence as defined in § 22-3201, committed in any jurisdiction, but does not include larceny or attempted larceny.

(6) "Dealer's license" means a license to buy or sell, repair, trade, or otherwise deal in firearms, destructive devices, or ammunition as provided for in subchapter IV of this chapter.

(7) "Destructive device" means:

(A) An explosive, incendiary, or poison gas bomb, grenade, rocket, missile, mine, or similar device;

(B) Any device by whatever name known which will, or is designed or redesigned, or may be readily converted or restored to expel a projectile by the action of an explosive or other propellant through a smooth bore barrel, except a shotgun;

(C) Any device containing tear gas or a chemically similar lacrimator or sternutator by whatever name known;

(D) Any device designed or redesigned, made or remade, or readily converted or restored, and intended to stun or disable a person by means of electric shock;

(E) Any combination of parts designed or intended for use in converting any device into any destructive device; or from which a destructive device may be readily assembled: Provided, that the term shall not include:

(i) Any pneumatic, spring, or B-B gun which expels a single projectile not exceeding .18 inch in diameter;

(ii) Any device which is neither designed nor redesigned for use as a weapon;

(iii) Any device originally a weapon which has been redesigned for use as a signaling, line throwing, or safety device; or

(iv) Any device which the Chief finds is not likely to be used as a weapon.

(8) "District" means District of Columbia.

(9) "Firearm" means any weapon which will, or is designed or redesigned, made or remade, readily converted or restored, and intended to, expel a projectile or projectiles by the action of an explosive; the frame or receiver of any such device; or any firearm muffler or silencer: Provided, that such term shall not include:

(A) Antique firearms; or

(B) Destructive devices;

(C) Any device used exclusively for line throwing, signaling, or safety, and required or recommended by the Coast Guard or Interstate Commerce Commission; or

(D) Any device used exclusively for firing explosive rivets, stud cartridges, or similar industrial ammunition and incapable for use as a weapon.

(10) "Machine gun" means any firearm which shoots, is designed to shoot, or can be readily converted or restored to shoot:

(A) Automatically, more than 1 shot by a single function of the trigger;

(B) Semiautomatically, more than 12 shots without manual reloading.

(11) "Organization" means any partnership, company, corporation, or other business entity, or any group or association of 2 or more persons united for a common purpose.

(12) "Pistol" means any firearm originally designed to be fired by use of a single hand.

(13) "Registration certificate" means a certificate validly issued pursuant to this chapter evincing the registration of a firearm pursuant to this chapter.

(13a) "Restricted pistol bullet" means any bullet designed for use in a pistol which, when fired from a pistol with a barrel of 5 inches or less in length, is capable of penetrating commercially available body armor with a penetration resistance equal to or greater than that of 18 layers of kevlar.

(14) "Rifle" means a grooved bore firearm using a fixed metallic cartridge with a single projectile and designed or redesigned, made or remade, and intended to be fired from the shoulder.

(15) "Sawed-off shotgun" means a shotgun having a barrel of less than 20 inches in length; or a firearm made from a shotgun if such firearm as modified has an overall length of less than 26 inches or any barrel of less than 20 inches in length.

(16) "Shotgun" means a smooth bore firearm using a fixed shotgun shell with either a number of ball shot or a single projectile, and designed or redesigned, made or remade, and intended to be fired from the shoulder.

(17) "Short barreled rifle" means a rifle having any barrel less than 16 inches in length, or a firearm made from a rifle if such firearm as modified has an overall length of less than 26 inches or any barrel of less than 16 inches.

(18) "Weapons offense" means any violation in any jurisdiction of any law which involves the sale, purchase, transfer in any manner, receipt, acquisition, possession, having under control, use, repair, manufacture, carrying, or transportation of any firearm, ammunition, or destructive device. (1973 Ed., § 6-1802; Sept. 24, 1976, D.C. Law 1-85, title I, § 101, 23 DCR 2464; Mar. 16, 1978, D.C. Law 2-62, § 2, 24 DCR 5780; Aug. 2, 1983, D.C. Law 5-19, § 2, 30 DCR 3328.)

Section references. — This section is referred to in §§ 6-2323 and 6-2381.

Legislative history of Law 1-85. — See note to § 6-2301.

Legislative history of Law 2-62. — Law 2-62, the "Firearms Control Regulations Act Technical Amendments Act of 1977," was introduced in Council and assigned Bill No. 2-194, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on October 11, 1977 and October 25, 1977, respectively. Signed by the Mayor on January 3, 1978, it was assigned Act No. 2-129 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-19. — Law 5-19, the "Firearms Control Regulations Act of 1975 Amendments Act of 1983," was introduced in Council and assigned Bill No. 5-110, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on May 24, 1983 and June 7, 1983, respectively. Signed by the Mayor on June 9, 1983, it was assigned Act No. 5-36 and transmitted to both Houses of Congress for its review.

References in text. — "An Act to Amend Title 18, United States Code, to Provide for Better Control of the Interstate Traffic in Firearms Act of 1968," referred to in subparagraph

(C) of paragraph (1), is the Gun Control Act of 1968, Pub. L. 90-618.

"Firearm." — The phrase "intended to" in subsection (9) imposes on substantive requirement that the government prove that defendant specifically intended the weapon to be useable as a firearm. *Townsend v. United States*, App. D.C., 559 A.2d 1319 (1989).

Intent of paragraph (10). — The Council, in adopting paragraph (10) of this section, was concerned primarily with the inherent fire power of certain weapons, not with the question of firearm modification after registration. *Fesjian v. Jefferson*, App. D.C., 399 A.2d 861 (1979).

The nature of the weapons, plus the administration of the program, not the character of the weapon's owner, prompted the Council to adopt paragraph (10) of this section. *Fesjian v. Jefferson*, App. D.C., 399 A.2d 861 (1979).

Cited in *McIntosh v. Washington*, App. D.C., 395 A.2d 744 (1978); *Logan v. United States*, App. D.C., 489 A.2d 485 (1985); *Washington v. United States*, App. D.C., 498 A.2d 247 (1985); *Ford v. Turner*, App. D.C., 531 A.2d 233 (1987); *Stein v. United States*, App. D.C., 532 A.2d 641 (1987), cert. denied, 485 U.S. 1010, 108 S. Ct. 1477, 99 L. Ed. 2d 705 (1988); *Bates v. United States*, App. D.C., 619 A.2d 984 (1993); *United States v. Ruffin*, 40 F.3d 1296 (D.C. Cir. 1994).

*Subchapter II. Firearms and Destructive Devices.***§ 6-2311. Registration requirements.**

(a) Except as otherwise provided in this chapter, no person or organization in the District of Columbia ("District") shall receive, possess, control, transfer, offer for sale, sell, give, or deliver any destructive device, and no person or organization in the District shall possess or control any firearm, unless the person or organization holds a valid registration certificate for the firearm. A registration certificate may be issued:

(1) To an organization if:

(A) The organization employs at least 1 commissioned special police officer or employee licensed to carry a firearm whom the organization arms during the employee's duty hours; and

(B) The registration is issued in the name of the organization and in the name of the president or chief executive officer of the organization; or

(2) In the discretion of the Chief of Police, to a police officer who has retired from the Metropolitan Police Department.

(b) Subsection (a) of this section shall not apply to:

(1) Any law enforcement officer or agent of the District or the United States, or any law enforcement officer or agent of the government of any state or subdivision thereof, or any member of the armed forces of the United States, the National Guard or organized reserves, when such officer, agent, or member is authorized to possess such a firearm or device while on duty in the performance of official authorized functions;

(2) Any person holding a dealer's license: Provided, that the firearm or destructive device is:

(A) Acquired by such person in the normal conduct of business;

(B) Kept at the place described in the dealer's license; and

(C) Not kept for such person's private use or protection, or for the protection of his business;

(3) With respect to firearms, any nonresident of the District participating in any lawful recreational firearm-related activity in the District, or on his way to or from such activity in another jurisdiction: Provided, that such person, whenever in possession of a firearm, shall upon demand of any member of the Metropolitan Police Department, or other bona fide law enforcement officer, exhibit proof that he is on his way to or from such activity, and that his possession or control of such firearm is lawful in the jurisdiction in which he resides: Provided further, that such weapon shall be unloaded, securely wrapped, and carried in open view. (1973 Ed., § 6-1811; Sept. 24, 1976, D.C. Law 1-85, title II, § 201, 23 DCR 2464; May 7, 1993, D.C. Law 9-266, § 2(a), 39 DCR 5676.)

Section references. — This section is referred to in §§ 6-2341 and 6-2372.

Effect of amendments. — D.C. Law 9-266 in (a) in the first sentence substituted "in the

District of Columbia ("District,") shall" for "shall within the District," "in the District shall" for "shall, within the District" and "holds" for "is the holder of," and deleted "have under

his" preceding the first "control" and "have under his or its" preceding the second use of "control"; and rewrote the second sentence.

Legislative history of Law 1-85. — See note to § 6-2301.

Legislative history of Law 9-266. — Law 9-266, the "Handgun Possession Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-91 which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 2, 1992, and July 7, 1992, respectively. Signed by the Mayor on July 21, 1992, it was assigned Act No. 9-247 and transmitted to both Houses of Congress for its review. D.C. Law 9-266 became effective on May 7, 1993.

Employees of United States Department of Agriculture authorized to carry firearms. — Public Law 97-312 provided that any employee of the United States Department of Agriculture designated by the Secretary of Agriculture and the Attorney General of the United States may carry a firearm and use a firearm when necessary for self-protection, in accordance with rules and regulations issued by the Secretary of Agriculture and the Attorney General of the United States, while such employee is engaged in the performance of the employee's official duties to (1) carry out any law or regulation related to the control, eradication, or prevention of the introduction or dissemination of communicable disease of livestock or poultry into the United States or (2) perform any duty related to such disease control, eradication, or prevention, subject to the direction of the Secretary.

Constitutionality. — This section and §§ 6-2361 and 22-3204 do not violate the Second Amendment. *Sandidge v. United States*, App. D.C., 520 A.2d 1057, cert. denied, 484 U.S. 868, 108 S. Ct. 193, 98 L. Ed. 2d 145 (1987).

Purpose of section. — Congress promulgated this section in an effort to curtail the flow of arms on the public streets, and thereby reduce the number of resultant injuries and deaths. *Billinger v. United States*, App. D.C., 425 A.2d 1304 (1981).

Focus of chapter. — It is absolutely clear from this section and §§ 6-2313, 6-2323, 6-2361 and 6-2375 and the language and phrasing of other provisions of the Firearms Control Regulation Act of 1975 that the Act focuses equally, if not more, on the person than on the firearm. This dual emphasis fully comports with the purpose of the Act to freeze the handgun population within the District of Columbia by expanding and strengthening the then preexisting firearm registration standards and to prescribe criminal penalties for the violation of its provisions. *District of Columbia v. Rowan*, 116 WLR 2353 (Super. Ct. 1988).

Lending or giving firearm to another. — A valid holder of a registration certificate for a

firearm could not lend or give it to another person, who was not a holder of a registration certificate, whether that person be a relative or a friend, and whether the purpose was for protection or some other worthy objective. *District of Columbia v. Rowan*, 116 WLR 2353 (Super. Ct. 1988).

Unregistrable firearms and ammunition. — The requirements of subsection (a) of this section are not limited to firearms that are operable. It reaches unregistrable firearms and their ammunition. *United States v. Smith*, 118 WLR 2277 (Super. Ct. 1990).

Although neither a machine gun nor its ammunition is registrable, it is a violation of the registration statute to possess them. *United States v. Smith*, 118 WLR 2277 (Super. Ct. 1990).

Operability of firearm. — The registration requirements of subsection (a) of this section are not limited to firearms that are operable, although § 22-3204, the statute that prohibits the carrying of a pistol without a license, requires a showing of operability. *Townsend v. United States*, App. D.C., 559 A.2d 1319 (1989).

"When" in subsection (b)(1) of this section is the semantic equivalent of "if," and does not imply that the authority of the named personnel to possess an unregistered firearm exists only during their time on duty. *Timus v. United States*, App. D.C., 406 A.2d 1269 (1979).

Former law enforcement officials. — While the provisions of subsection (b)(1) are not limited to just the time the officer is actually on duty, a plain unambiguous reading of the provision does require that the law enforcement officer be a current law enforcement officer and the conclusion that this exemption does not apply to former District of Columbia or United States law enforcement officers and agents. There is no way the language "while on duty in the performance of official functions" can be construed to exempt persons who are no longer law enforcement officials, who can have no "official functions" once their law enforcement status has terminated. *District of Columbia v. Rowan*, 116 WLR 2353 (Super. Ct. 1988).

Registration held by employer imputed to employee. — When a person is issued a firearm by an employer which holds a registration certificate for that firearm under subsection (a) of this section, and is required by law or regulation to possess the issued firearm while off duty, the registration held by the employer will be imputed to the employee for the purposes of § 6-2361(3). *Timus v. United States*, App. D.C., 406 A.2d 1269 (1979).

Security services allowed. — Subsection (a) specifically allows an organization providing armed and unarmed security services to clients to furnish properly registered firearms to special police officers during duty hours and allows the commissioned special police officers of such

an organization to maintain their firearms in a loaded usable condition during duty hours. *McIntosh v. Washington*, App. D.C., 395 A.2d 744 (1978).

Special police officers and others who are issued firearms by their employers cannot register their weapons; they nevertheless are entitled to carry them and ammunition for them. *Timus v. United States*, App. D.C., 406 A.2d 1269 (1979).

And recreational activities. — The District of Columbia Council intended that both residents and nonresidents of the District be allowed to participate in recreational activities within the meaning of subsection (b)(3) so long as their firearms are validly registered in their respective jurisdictions and meet local safety criteria. *McIntosh v. Washington*, App. D.C., 395 A.2d 744 (1978).

Immunity from prosecution for voluntary surrender of firearms. — Where the wife of the gun's owner was technically in violation of this section both by exercising sufficient control over the shotgun in its delivery to the police, and by being in constructive possession of it while it was kept in her home, she could have been subject to arrest or prosecution were it not for the immunity provisions of § 6-2375(a). *Kuhn v. Cissel*, App. D.C., 409 A.2d 182 (1979).

Violations of provisions are general intent crimes. — Violations of §§ 22-3204, 6-2311, and 6-2361 are general intent crimes, and no specific intent to use the gun (or the ammunition) need be proved in order to obtain a conviction under any of the three statutes. A claim of mistake of law, without more, cannot be relied upon by a defendant charged with a general intent crime. *Bsharah v. United States*, App. D.C., 646 A.2d 993 (1994).

In order to sustain conviction for constructive possession of unregistered weapon and ammunition the government must prove two elements: Knowledge of the presence of the pistol or ammunition and the existence of dominion and control over them. *Easley v. United States*, App. D.C., 482 A.2d 779 (1984); *Logan v. United States*, App. D.C., 489 A.2d 485 (1985).

The government failed to present evidence which could permit a reasonable mind to fairly conclude beyond a reasonable doubt that defendants knew of an unregistered loaded pistol where none of them had actual possession. *Curry v. United States*, App. D.C., 520 A.2d 255 (1987).

An implicit requirement for constructive possession is that the accused have the intent to exercise dominion or control over the object in question. In *re L.A.V.*, App. D.C., 578 A.2d 708 (1990).

To prove constructive possession, the government is required to show that appellant (1)

knew of the location of the handgun; (2) had the ability to exercise dominion and control over it; and (3) intended to exercise dominion and control over it. *Burnette v. United States*, App. D.C., 600 A.2d 1082 (1991).

The inference of a car passenger's intent to exercise control drawn solely from evidence of the passenger's convenient access to contraband in a car should not be extended beyond situations where the evidence shows the contraband was in plain view of that passenger defendant. *Burnette v. United States*, App. D.C., 600 A.2d 1082 (1991).

Constructive possession may be established by either direct or circumstantial evidence. *Logan v. United States*, App. D.C., 489 A.2d 485 (1985).

Evidence of proximity is sufficient to permit the jury to infer that a defendant had convenient access and thus dominion and control over a gun. *Logan v. United States*, App. D.C., 489 A.2d 485 (1985).

Evidence sufficient to support conviction. — Defendant's ownership of vehicle where pistol was found, his operation of that vehicle, and circumstances showing his knowledge that pistol was in the trunk of the vehicle are sufficient to sustain conviction under this section. *United States v. Duncan*, 115 WLR 2517 (Super. Ct. 1987); *United States v. Joseph*, 892 F.2d 118 (D.C. Cir. 1989); *Thompson v. United States*, App. D.C., 567 A.2d 907 (1989).

Evidence sufficient to support conviction for constructive possession of firearms. *United States v. Evans*, 888 F.2d 891 (D.C. Cir. 1989), cert. denied, 494 U.S. 1019, 110 S. Ct. 1325, 108 L. Ed. 2d 500 (1990).

Evidence insufficient to support conviction on either a theory of constructive possession or a theory of aiding and abetting. In *re L.A.V.*, App. D.C., 578 A.2d 708 (1990).

Evidence did not establish a sufficient association between the individual defendants and the weapon or the live rounds where the case against the defendants consisted of their proximity to a pistol and ammunition in plain view in a sordid crack house, when both were found not guilty of any connection with the drugs. In *re T.M.*, App. D.C., 577 A.2d 1149 (1990).

Instruction on violation of section as negligence denied in wrongful death action. — Since neither the nature of this provision nor its legislative history clearly indicates a purpose of preventing crimes by gun-thieves, trial judge properly denied requested instruction that violation of section was either negligence or at least evidence of negligence in wrongful death action against owner of stolen gun used to kill decedent. *Romero v. National Rifle Ass'n of Am.*, 749 F.2d 77 (D.C. Cir. 1984).

Requisite articulable suspicion sufficient to warrant stopping suspect and

search for weapons. — See *Lawrence v. United States*, App. D.C., 509 A.2d 614 (1986).

Consecutive sentences not violative of double jeopardy. — Defendant's consecutive sentences for pleading guilty to carrying a pistol without a license and possession of an unregistered firearm did not violate the double jeopardy clause, because his conduct constituted a single incident. *Tyree v. United States*, App. D.C., 629 A.2d 20 (1993).

Cited in *United States v. Dixon*, 446 F. Supp. 58 (D.D.C. 1978); *Stover v. United States*, App. D.C., 410 A.2d 188 (1979); *Price v. United States*, App. D.C., 429 A.2d 514 (1981); *United States v. Ward*, App. D.C., 438 A.2d 201 (1981); *Simmons v. United States*, App. D.C., 444 A.2d 962 (1982); *United States v. McCarthy*, App. D.C., 448 A.2d 267 (1982); *Brooks v. United States*, App. D.C., 458 A.2d 66 (1983); *United States v. Covington*, App. D.C., 459 A.2d 1067 (1983); *Reid v. United States*, App. D.C., 466 A.2d 433 (1983); *Purce v. United States*, App. D.C., 482 A.2d 772 (1984); *Jackson v. United States*, App. D.C., 498 A.2d 185 (1985); *Hammond v. United States*, App. D.C., 501 A.2d 796 (1985); *Marbury v. United States*, App. D.C., 540 A.2d 114 (1985); *United States v. Payne*, 805 F.2d 1062 (D.C. Cir. 1986); *United States v. Mudd*, 817 F.2d 840 (D.C. Cir. 1987); *United States v. Jackson*, 824 F.2d 21 (D.C. Cir. 1987); *Hinnant v. United States*, App. D.C., 520 A.2d 292 (1987); *Ford v. Turner*, App. D.C., 531 A.2d 233 (1987); *Hollingsworth v. United States*, App. D.C., 531 A.2d 973 (1987); *Davis v. United States*, App. D.C., 532 A.2d 656 (1987); *McGee v. United States*, App. D.C., 533 A.2d 1268 (1987); *United States v. Socey*, 846 F.2d 1439 (D.C. Cir. 1988); *United States v. Johnson*, App. D.C., 540 A.2d 1090 (1988); *Jones v. United States*, App. D.C., 544 A.2d 1250 (1988); *Brown v. United States*, App. D.C., 546 A.2d 390 (1988); *Deneal v. United States*, App. D.C., 551 A.2d 1312 (1988); *United States v. McDonald*, 877 F.2d 91 (D.C. Cir. 1989); *United States v. Wood*, 879 F.2d 927 (D.C. Cir. 1989);

Franklin v. United States, App. D.C., 555 A.2d 1010 (1989); *Staten v. United States*, App. D.C., 562 A.2d 90 (1989); *Williams v. United States*, App. D.C., 576 A.2d 700 (1990); *United States v. Alston*, App. D.C., 580 A.2d 587 (1990); *United States v. Alston*, 118 WLR 819 (Super. Ct. 1990); *United States v. Barnes*, 118 WLR 1709 (Super. Ct. 1990); *Irby v. United States*, App. D.C., 585 A.2d 759 (1991); *Key v. United States*, App. D.C., 587 A.2d 1072 (1991); *Brown v. United States*, App. D.C., 589 A.2d 434 (1991); *Duhart v. United States*, App. D.C., 589 A.2d 895 (1991); *Galberth v. United States*, App. D.C., 590 A.2d 990 (1991); *Clark v. United States*, App. D.C., 593 A.2d 186 (1991); *Chang Yoon v. United States*, App. D.C., 594 A.2d 1056 (1991); *Gomez v. United States*, App. D.C., 597 A.2d 884 (1991); *Jamison v. United States*, App. D.C., 600 A.2d 65 (1991); *Freeman v. United States*, App. D.C., 600 A.2d 1070 (1991); *United States v. Hobbs*, 119 WLR 673 (Super. Ct. 1991); *Thomas v. United States*, App. D.C., 602 A.2d 647 (1992); *Williamson v. United States*, App. D.C., 607 A.2d 471 (1992), cert. denied, — U.S. —, 114 S. Ct. 96, 126 L. Ed. 2d 63 (1993); *Yoon v. United States*, App. D.C., 610 A.2d 1388 (1992); *In re D.E.W.*, App. D.C., 612 A.2d 194 (1992); *Farmer v. United States*, App. D.C., 616 A.2d 1241 (1992), cert. denied, — U.S. —, 113 S. Ct. 1958, 123 L. Ed. 2d 661 (1993); *Ford v. United States*, App. D.C., 616 A.2d 1245 (1992); *United States v. Harris*, App. D.C., 617 A.2d 189 (1992); *Whitaker v. United States*, App. D.C., 617 A.2d 499 (1992); *Edwards v. United States*, App. D.C., 619 A.2d 33 (1993); *United States v. Bellamy*, App. D.C., 619 A.2d 515 (1993); *Norman v. United States*, App. D.C., 623 A.2d 1165 (1993); *United States v. Harris*, App. D.C., 629 A.2d 481 (1993); *Ransom v. United States*, App. D.C., 630 A.2d 170 (1993); *Hilliard v. United States*, App. D.C., 638 A.2d 698 (1994); *Allen v. United States*, App. D.C., 649 A.2d 548 (1994); *United States v. Ruffin*, 40 F.3d 1296 (D.C. Cir. 1994); *United States v. Maiden*, 870 F. Supp. 359 (D.D.C. 1994).

§ 6-2312. Registration of certain firearms prohibited.

(a) A registration certificate shall not be issued for a:

- (1) Sawed-off shotgun;
- (2) Machine gun;
- (3) Short-barreled rifle; or

(4) Pistol not validly registered to the current registrant in the District prior to September 24, 1976, except that the provisions of this section shall not apply to any organization that employs at least 1 commissioned special police officer or other employee licensed to carry a firearm and that arms the employee with a firearm during the employee's duty hours or to a police officer who has retired from the Metropolitan Police Department.

(b) Nothing in this section shall prevent a police officer who has retired from

the Metropolitan Police Department from registering a pistol. (1973 Ed., § 6-1812; Sept. 24, 1976, D.C. Law 1-85, title II, § 202, 23 DCR 2464; Mar. 16, 1978, D.C. Law 2-62, § 2, 24 DCR 5780; May 7, 1993, D.C. Law 9-266, § 2(b), 39 DCR 5676.)

Section references. — This section is referred to in §§ 6-2319, 6-2341, and 6-2352.

Effect of amendments. — D.C. Law 9-266 added (b); and in (a) rewrote the introductory language, in (a)(3) substituted “barreled” for “barrel,” and in (a)(4) substituted the exception for the former proviso.

Legislative history of Law 1-85. — See note to § 6-2301.

Legislative history of Law 2-62. — See note to § 6-2302.

Legislative history of Law 9-266. — See note to § 6-2311.

This section does not violate the equal protection clause. *Fesjian v. Jefferson*, App. D.C., 399 A.2d 861 (1979).

Possession of unregistrable firearms and ammunition violation of registration statute. — Although neither a machine gun nor its ammunition is registrable, it is a violation of the registration statute to possess them. *United States v. Smith*, 118 WLR 2277 (Super. Ct. 1990).

Cited in *McIntosh v. Washington*, App. D.C., 395 A.2d 744 (1978); *Kuhn v. Cissel*, App. D.C., 409 A.2d 182 (1979); *Smith v. District of Columbia*, App. D.C., 436 A.2d 53 (1981); *Romero v. National Rifle Ass’n of Am.*, 749 F.2d 77 (D.C. Cir. 1984); *Ford v. Turner*, App. D.C., 531 A.2d 233 (1987).

§ 6-2313. Qualifications for registration; information required for registration.

(a) No registration certificate shall be issued to any person (and in the case of a person between the ages of 18 and 21, to the person and his signatory parent or guardian) or organization unless the Chief determines that such person (or the president or chief executive in the case of an organization):

(1) Is 21 years of age or older: Provided, that the Chief may issue to an applicant between the ages of 18 and 21 years old, and who is otherwise qualified, a registration certificate if the application is accompanied by a notarized statement of the applicant’s parent or guardian:

(A) That the applicant has the permission of his parent or guardian to own and use the firearm to be registered; and

(B) The parent or guardian assumes civil liability for all damages resulting from the actions of such applicant in the use of the firearm to be registered: Provided further, that such registration certificate shall expire on such person’s 21st birthday;

(2) Has not been convicted of a crime of violence, weapons offense, or of a violation of this chapter;

(3) Is not under indictment for a crime of violence or a weapons offense;

(4) Has not been convicted within 5 years prior to the application of any:

(A) Violation in any jurisdiction of any law restricting the use, possession, or sale of any narcotic or dangerous drug; or

(B) A violation of § 22-507, regarding threats to do bodily harm, or § 22-504, regarding assaults and threats, or any similar provision of the law of any other jurisdiction so as to indicate a likelihood to make unlawful use of a firearm;

(5) Within the 5-year period immediately preceding the application, has not been acquitted of any criminal charge by reason of insanity or has not been adjudicated a chronic alcoholic by any court: Provided, that this paragraph

shall not apply if such person shall present to the Chief, with the application, a medical certification indicating that the applicant has recovered from such insanity or alcoholic condition and is capable of safe and responsible possession of a firearm;

(6) Within the 5 years immediately preceding the application, has not been voluntarily or involuntarily committed to any mental hospital or institution: Provided, that this paragraph shall not apply, if such person shall present to the Chief, with the application, a medical certification that the applicant has recovered from whatever malady prompted such commitment;

(7) Does not appear to suffer from a physical defect which would tend to indicate that the applicant would not be able to possess and use a firearm safely and responsibly;

(8) Has not been adjudicated negligent in a firearm mishap causing death or serious injury to another human being;

(9) Is not otherwise ineligible to possess a pistol under § 22-3203;

(10) Has not failed to demonstrate satisfactorily a knowledge of the laws of the District of Columbia pertaining to firearms and the safe and responsible use of the same in accordance with tests and standards prescribed by the Chief: Provided, that once this determination is made with respect to a given applicant for a particular type of firearm, it need not be made again for the same applicant with respect to a subsequent application for the same type of firearms: Provided, further, that this paragraph shall not apply with respect to any firearm reregistered pursuant to § 6-2316; and

(11) Has vision better than or equal to that required to obtain a valid driver's license under the laws of the District of Columbia: Provided, that current licensure by the District of Columbia, of the applicant to drive, shall be prima facie evidence that such applicant's vision is sufficient and: Provided further, that this determination shall not be made with respect to persons applying to reregister any firearm pursuant to § 6-2316.

(b) Every person applying for a registration certificate shall provide on a form prescribed by the Chief:

(1) The full name or any other name by which the applicant is known;

(2) The present address and each home address where the applicant has resided during the 5-year period immediately preceding the application;

(3) The present business or occupation and any business or occupation in which the applicant has engaged during the 5-year period immediately preceding the application and the addresses of such businesses or places of employment;

(4) The date and place of birth of the applicant;

(5) The sex of the applicant;

(6) Whether (and if so, the reasons) the District, the United States or the government of any state or subdivision of any state has denied or revoked the applicant's license, registration certificate, or permit pertaining to any firearm;

(7) A description of the applicant's role in any mishap involving a firearm, including the date, place, time, circumstances, and the names of the persons injured or killed;

(8) The intended use of the firearm;

(9) The caliber, make, model, manufacturer's identification number, serial number, and any other identifying marks on the firearm;

(10) The name and address of the person or organization from whom the firearm was obtained, and in the case of a dealer, his dealer's license number;

(11) Where the firearm will generally be kept;

(12) Whether the applicant has applied for other registration certificates issued and outstanding;

(13) Such other information as the Chief determines is necessary to carry out the provisions of this chapter.

(c) Every organization applying for a registration certificate shall:

(1) With respect to the president or chief executive of such organization, comply with the requirements of subsection (b) of this section; and

(2) Provide such other information as the Chief determines is necessary to carry out the provisions of this chapter. (1973 Ed., § 6-1813; Sept. 24, 1976, D.C. Law 1-85, title II, § 203, 23 DCR 2464; Mar. 16, 1978, D.C. Law 2-62, § 2, 24 DCR 5780.)

Section references. — This section is referred to in §§ 6-2314, 6-2315, 6-2318, 6-2319, and 6-2342.

Legislative history of Law 1-85. — See note to § 6-2301.

Legislative history of Law 2-62. — See note to § 6-2302.

Focus of chapter. — It is absolutely clear from this section and §§ 6-2311, 6-2323, 6-2361 and 6-2375 and the language and phrasing of other provisions of the Firearms Control Regulation Act of 1975 that the Act focuses equally, if not more, on the person than on the firearm. This dual emphasis fully comports with the purpose of the Act to freeze the handgun population within the District of Columbia by expanding and strengthening the then preexisting firearm registration standards and to

prescribe criminal penalties for the violation of its provisions. *District of Columbia v. Rowan*, 116 WLR 2353 (Super. Ct. 1988).

Lending firearm to another. — A valid holder of a registration certificate for a firearm could not lend or give it to another person, who was not a holder of a registration certificate, whether that person be a relative or a friend, and whether the purpose was for protection or some other worthy objective. *District of Columbia v. Rowan*, 116 WLR 2353 (Super. Ct. 1988).

Cited in *McIntosh v. Washington*, App. D.C., 395 A.2d 744 (1978); *Romero v. National Rifle Ass'n of Am.*, 749 F.2d 77 (D.C. Cir. 1984); *United States v. Blakeney*, 753 F.2d 152 (D.C. Cir. 1985); *United States v. Jackson*, 824 F.2d 21 (D.C. Cir. 1987); *In re T.B.*, 120 WLR 1089 (Super. Ct. 1992).

§ 6-2314. Fingerprints and photographs of applicants; application in person required.

(a) The Chief may require any person applying for a registration certificate to be fingerprinted if, in his judgment, this is necessary to conduct an efficient and adequate investigation into the matters described in § 6-2313 and to effectuate the purpose of this chapter: Provided, that any person who has been fingerprinted by the Chief within 5 years prior to submitting the application need not, in the Chief's discretion, be fingerprinted again if he offers other satisfactory proof of identity.

(b) Each applicant, other than an organization, shall submit with the application 2 full-face photographs of himself, 1¾ by 1⅞ inches in size which shall have been taken within the 30-day period immediately preceding the filing of the application.

(c) Every applicant (or in the case of an organization, the president or chief executive, or a person authorized in writing by him), shall appear in person at

a time and place prescribed by the Chief, and may be required to bring with him the firearm for which a registration certificate is sought, which shall be unloaded and securely wrapped, and carried in open view. (1973 Ed., § 6-1814; Sept. 24, 1976, D.C. Law 1-85, title II, § 204, 23 DCR 2464; Mar. 16, 1978, D.C. Law 2-62, § 2, 24 DCR 5780.)

Legislative history of Law 1-85. — See note to § 6-2301.

Legislative history of Law 2-62. — See note to § 6-2302.

§ 6-2315. Application signed under oath; fees.

(a) Each applicant (the president or chief executive in the case of an organization) shall sign an oath or affirmation attesting to the truth of all the information required by § 6-2313.

(b) Each application required by this subchapter shall be accompanied by a nonrefundable fee to be established by the Mayor: Provided, that such fee shall, in the judgment of the Mayor, reimburse the District for the cost of services provided under this subchapter. (1973 Ed., § 6-1815; Sept. 24, 1976, D.C. Law 1-85, title II, § 205, 23 DCR 2464.)

Legislative history of Law 1-85. — See note to § 6-2301.

§ 6-2316. Time for filing registration applications.

(a) An application for a registration certificate shall be filed (and a registration certificate issued) prior to taking possession of a firearm from a licensed dealer or from any person or organization holding a registration certificate therefor. In all other cases, an application for registration shall be filed immediately after a firearm is brought into the District. It shall be deemed compliance with the preceding sentence if such person personally communicates with the Metropolitan Police Department (as determined by the Chief to be sufficient) and provides such information as may be demanded: Provided, that such person files an application for a registration certificate within 48 hours after such communication.

(b) Any firearm validly registered under prior regulations must be registered pursuant to this chapter in accordance with procedures to be promulgated by the Chief. An application to register such firearm shall be filed pursuant to this chapter within 60 days of September 24, 1976. (1973 Ed., § 6-1816; Sept. 24, 1976, D.C. Law 1-85, title II, § 206, 23 DCR 2464; Mar. 16, 1978, D.C. Law 2-62, § 2, 24 DCR 5780.)

Section references. — This section is referred to in § 6-2313.

Legislative history of Law 1-85. — See note to § 6-2301.

Legislative history of Law 2-62. — See note to § 6-2302.

This section does not violate the equal protection clause. *Fesjian v. Jefferson*, App. D.C., 399 A.2d 861 (1979).

Nor impermissibly burden interstate

commerce. — The phrase “brought into the District” in the 2nd sentence of subsection (a) does not refer to firearms packaged in their original shipping containers that are transported in interstate commerce in a bona fide shipment; thus this chapter does not totally exclude lawful articles of interstate commerce. *McIntosh v. Washington*, App. D.C., 395 A.2d 744 (1978).

To the extent that this section requires that a

shipper of firearms obtain a local dealer's license if he remains in the District for a time period longer than a mere brief stop en route to another jurisdiction, the burden on interstate commerce is slight and not unreasonable since the interest served is a legitimate local concern. *McIntosh v. Washington*, App. D.C., 395 A.2d 744 (1978).

Purpose of section. — This section is designed to require those obtaining firearms in the District of Columbia or nonresidents who move into the District with registerable firearms to register them promptly. *McIntosh v. Washington*, App. D.C., 395 A.2d 744 (1978).

Cited in *Kuhn v. Cissel*, App. D.C., 409 A.2d 182 (1979).

§ 6-2317. Issuance of registration certificate; time period; corrections.

(a) Upon receipt of a properly executed application for registration certificate, the Chief, upon determining through inquiry, investigation, or otherwise, that the applicant is entitled and qualified under the provisions of this chapter, thereto, shall issue a registration certificate. Each registration certificate shall be in duplicate and bear a unique registration certificate number and such other information as the Chief determines is necessary to identify the applicant and the firearm registered. The duplicate of the registration certificate shall be delivered to the applicant and the Chief shall retain the original.

(b) The Chief shall approve or deny an application for a registration certificate within a 60-day period beginning on the date the Chief receives the application, unless good cause is shown, including nonreceipt of information from sources outside the District government: Provided, that in the case of an application to register a firearm validly registered under prior regulations, the Chief shall have 365 days after the receipt of such application to approve or deny such application. The Chief may hold in abeyance an application where there is a revocation proceeding pending against such person or organization.

(c) Upon receipt of a registration certificate, each applicant shall examine same to ensure that the information thereon is correct. If the registration certificate is incorrect in any respect, the person or organization named thereon shall return it to the Chief with a signed statement showing the nature of the error. The Chief shall correct the error, if it occurred through administrative error. In the event the error resulted from information contained in the application, the applicant shall be required to file an amended application setting forth the correct information, and a statement explaining the error in the original application. Each amended application shall be accompanied by a fee equal to that required for the original application.

(d) In the event the Chief learns of an error in a registration certificate other than as provided in subsection (c) of this section, he may require the holder to return the registration certificate for correction. If the error resulted from information contained in the application, the person or organization named therein shall be required to file an amended application as provided in subsection (c) of this section.

(e) Each registration certificate issued by the Chief shall be accompanied by a statement setting forth the registrant's duties under this chapter.

(f) In the discretion of the Chief of Police, a registration certificate may be issued to a retired police officer who is a resident of the District of Columbia for a pistol and ammunition which conforms to the Metropolitan Police Department General Orders and policies.

(g) When the retired police officer ceases to be a resident of the District of Columbia the registration certificate expires.

(h) Nothing in this chapter shall create an entitlement to a registration certificate for a retired police officer. If the Chief of Police denies a retired police officer's registration certificate application, the Chief of Police shall state the reasons for the denial in writing.

(i) The District of Columbia shall not incur any liability by reason of the issuance or denial of a certificate, nor for any use made of the registered firearm. (1973 Ed., § 6-1817; Sept. 24, 1976, D.C. Law 1-85, title II, § 207, 23 DCR 2464; Mar. 16, 1978, D.C. Law 2-62, § 2, 24 DCR 5780; May 7, 1993, D.C. Law 9-266, § 2(c), 39 DCR 5676.)

Effect of amendments. — D.C. Law 9-266 added (f) through (i).

Legislative history of Law 1-85. — See note to § 6-2301.

Legislative history of Law 2-62. — See note to § 6-2302.

Legislative history of Law 9-266. — See note to § 6-2311.

Time period set out in this section is advisory rather than mandatory. *Fesjian v. Jefferson*, App. D.C., 399 A.2d 861 (1979).

And no penalty or consequence is specified for failing to act within the time period designated in this section. *Fesjian v. Jefferson*, App. D.C., 399 A.2d 861 (1979).

§ 6-2318. Duties of registrants.

Each person and organization holding a registration certificate, in addition to any other requirements imposed by this chapter, or the acts of Congress, shall:

(1) Notify the Chief in writing of:

(A) The loss, theft, or destruction of the registration certificate or of a registered firearm (including the circumstances, if known) immediately upon discovery of such loss, theft, or destruction;

(B) A change in any of the information appearing on the registration certificate or required by § 6-2313;

(C) The sale, transfer or other disposition of the firearm not less than 48 hours prior to delivery, pursuant to such sale, transfer or other disposition, including:

(i) Identification of the registrant, the firearm and the serial number of the registration certificate;

(ii) The name, residence, and business address and date of birth of the person to whom the firearm has been sold or transferred; and

(iii) Whether the firearm was sold or how it was otherwise transferred or disposed of.

(2) Return to the Chief, the registration certificate for any firearm which is lost, stolen, destroyed, or otherwise transferred or disposed of, at the time he notifies the Chief of such loss, theft, destruction, sale, transfer, or other disposition.

(3) Have in his possession, whenever in possession of a firearm, the registration certificate for such firearm, and exhibit the same upon the demand of a member of the Metropolitan Police Department, or other law enforcement officer. (1973 Ed., § 6-1818; Sept. 24, 1976, D.C. Law 1-85, title II, § 208, 23 DCR 2464.)

Section references. — This section is referred to in § 6-2319.

Legislative history of Law 1-85. — See note to § 6-2301.

§ 6-2319. Revocation of registration certificate.

A registration certificate shall be revoked if:

- (1) Any of the criteria in § 6-2313 are not currently met;
- (2) The registered firearm has become an unregisterable firearm under the terms of § 6-2312, or a destructive device;
- (3) The information furnished to the Chief on the application for a registration certificate proves to be intentionally false; or
- (4) There is a violation or omission of the duties, obligations or requirements imposed by § 6-2318. (1973 Ed., § 6-1819; Sept. 24, 1976, D.C. Law 1-85, title II, § 209, 23 DCR 2464.)

Legislative history of Law 1-85. — See note to § 6-2301.

§ 6-2320. Procedure for denial and revocation of registration certificate.

(a) If it appears to the Chief that an application for a registration certificate should be denied or that a registration certificate should be revoked, the Chief shall notify the applicant or registrant of the proposed denial or revocation, briefly stating the reason or reasons therefor. Service may be made by delivering a copy of the notice to the applicant or registrant personally, or by leaving a copy thereof at the place of residence identified on the application or registration with some person of suitable age and discretion then residing therein, or by mailing a copy of the notice by certified mail to the residence address identified on the application or certificate, in which case service shall be complete as of the date the return receipt was signed. In the case of an organization, service may be made upon the president, chief executive, or other officer, managing agent or person authorized by appointment or law to receive such notice as described in the preceding sentence at the business address of the organization identified in the application or registration certificate. The person serving the notice shall make proof thereof with the Chief in a manner prescribed by him. In the case of service by certified mail, the signed return receipt shall be filed with the Chief together with a signed statement showing the date such notice was mailed; and if the return receipt does not purport to be signed by the person named in the notice, then specific facts from which the Chief can determine that the person who signed the receipt meets the appropriate qualifications for receipt of such notice set out in this subsection. The applicant or registrant shall have 15 days from the date the notice is served in which to submit further evidence in support of the application or qualifications to continue to hold a registration certificate, as the case may be: Provided, that if the applicant does not make such a submission within 15 days from the date of service, the applicant or registrant shall be deemed to have conceded the validity of the reason or reasons stated in the notice, and the denial of revocation shall become final.

(b) Within 10 days of the date upon which the Chief receives such a submission, he shall serve upon the applicant or registrant in the manner specified in subsection (a) of this section notice of his final decision. The Chief's decision shall become effective at the expiration of the time within which to file a notice of appeal pursuant to the District of Columbia Administrative Procedure Act (D.C. Code, § 1-1501 et seq.) or, if such a notice of appeal is filed, at the time the final order or judgment of the District of Columbia Court of Appeals becomes effective.

(c) Within 7 days of a decision unfavorable to the applicant or registrant becoming final, the applicant or registrant shall:

(1) Peaceably surrender to the Chief the firearm for which the registration certificate was revoked in the manner provided in § 6-2375; or

(2) Lawfully remove such firearm from the District for so long as he has an interest in such firearm; or

(3) Otherwise lawfully dispose of his interest in such firearm. (1973 Ed., § 6-1820; Sept. 24, 1976, D.C. Law 1-85, title II, § 210, 23 DCR 2464; Mar. 16, 1978, D.C. Law 2-62, § 2, 24 DCR 5780.)

Section references. — This section is referred to in §§ 6-2346, 6-2351, and 6-2375.

Legislative history of Law 1-85. — See note to § 6-2301.

Legislative history of Law 2-62. — See note to § 6-2302.

This section is an exercise of legislative police power and not of eminent domain. *Fesjian v. Jefferson*, App. D.C., 399 A.2d 861 (1979).

And compensation is not required. — This section constitutes a proper exercise of

police power to prevent a perceived public harm, which does not require compensation under the Fifth Amendment. *Fesjian v. Jefferson*, App. D.C., 399 A.2d 861 (1979).

Contested case procedures apply. — Subsection (b) of this section and § 6-2346(b) refer to the Court of Appeal's direct review jurisdiction under the Administrative Procedure Act (§ 1-1501 et seq.), which jurisdiction can only be exercised at the conclusion of "contested case" procedures. *McIntosh v. Washington*, App. D.C., 395 A.2d 744 (1978).

§ 6-2321. Information prohibited from use as evidence in criminal proceedings.

No information obtained from a person under this subchapter or retained by a person in order to comply with any section of this subchapter, shall be used as evidence against such person in any criminal proceeding with respect to a violation of this chapter, occurring prior to or concurrently with the filing of the information required by this subchapter: Provided, that this section shall not apply to any violation of § 22-2511 or § 6-2374. (1973 Ed., § 6-1821; Sept. 24, 1976, D.C. Law 1-85, title II, § 211, 23 DCR 2464; Mar. 16, 1978, D.C. Law 2-62, § 2, 24 DCR 5780; Aug. 2, 1983, D.C. Law 5-24, § 13, 30 DCR 3341.)

Legislative history of Law 1-85. — See note to § 6-2301.

Legislative history of Law 2-62. — See note to § 6-2302.

Legislative history of Law 5-24. — Law 5-24, the "Technical and Clarifying Amendments Act of 1983," was introduced in Council

and assigned Bill No. 5-169, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 10, 1983, and May 24, 1983, respectively. Signed by the Mayor on June 9, 1983, it was assigned Act No. 5-41 and transmitted to both Houses of Congress for its review.

§ 6-2322. Definition.

For the purposes of §§ 6-2322 through 6-2324, the term:

“Self-defense spray” means a mixture of a lacrimator including chloroacetophenone, alpha-chloroacetophenone, phenylchloromethylketone, ortho-chlorobenazalm-alononitrile or oleoresin capsicum. (Sept. 24, 1976, D.C. Law 1-85, title II, § 212, as added Mar. 17, 1993, D.C. Law 9-244, § 2, 40 DCR 647; _____, 1995, D.C. Law 10- (Act 10-302), § 10(a), 41 DCR 5193.)

Effect of amendments. — D.C. Law 9-244 added this section.

D.C. Law 10- (Act 10-302) validated a previously made punctuation change.

Legislative history of Law 9-244. — Law 9-244, the “Legalization of Self-Defense Sprays Amendment Act of 1992,” was introduced in Council and assigned Bill No. 9-587, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 1, 1992, and December 15, 1992, respectively. Signed by the Mayor on January 5, 1993, it was assigned Act No. 9-382 and transmitted to both Houses of Congress for its

review. D.C. Law 9-244 became effective on March 17, 1993.

Legislative history of Law 10- (Act 10-302). — Law 10- (Act 10-302), the “Technical Amendments Act of 1994,” was introduced in Council and assigned Bill No. 10-673, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on July 25, 1994, it was assigned Act No. 10-302 and transmitted to both Houses of Congress for its review. D.C. Law 10- (Act 10-302) is projected to become law May 25, 1995.

§ 6-2323. Possession of self-defense sprays.

(a) Notwithstanding the provisions of § 6-2302(7)(C), a person 18 years of age or older may possess and use a self-defense spray in the exercise of reasonable force in defense of the person or the person’s property only if it is propelled from an aerosol container, labeled with or accompanied by clearly written instructions as to its use, and dated to indicate its anticipated useful life.

(b) No person shall possess a self-defense spray which is of a type other than that specified in this act. (Sept. 24, 1976, D.C. Law 1-85, title II, § 213, as added Mar. 17, 1993, D.C. Law 9-244, § 2, 40 DCR 647; _____, 1995, D.C. Law 10- (Act 10-302), § 10(b), 41 DCR 5193.)

Section references. — This section is referred to in § 6-2322.

Effect of amendments. — D.C. Law 9-244 added this section.

D.C. Law 10- (Act 10-302) validated a previously made capitalization change.

Legislative history of Law 9-244. — See note to § 6-2322.

Legislative history of Law 10- (Act 10-302). — See note to § 6-2322.

References in text. — “This act,” referred to in (b), is D.C. Law 9-244.

§ 6-2324. Registration of self-defense sprays.

(a) A person 18 years of age or older must register the self-defense spray at the time of purchase by completing a standard registration form.

(b) The vendor must forward the registration form to the Metropolitan Police Department. (Sept. 24, 1976, D.C. Law 1-85, title II, § 214, as added Mar. 17, 1993, D.C. Law 9-244, § 2, 40 DCR 647.)

Section references. — This section is referred to in § 6-2322.

Effect of amendments. — D.C. Law 9-244 added this section.

Legislative history of Law 9-244. — See note to § 6-2322.

Subchapter III. Estates Containing Firearms.

§ 6-2331. Rights and responsibilities of executors and administrators.

(a) The executor or administrator of an estate containing a firearm shall notify the Chief of the death of the decedent within 30 days of his appointment or qualification, whichever is earlier.

(b) Until the lawful distribution of such firearm to an heir or legatee or the lawful sale, transfer, or disposition of the firearm by the estate, the executor or administrator of such estate shall be charged with the duties and obligations which would have been imposed by this chapter upon the decedent, if the decedent were still alive: Provided, that such executor or administrator shall not be liable to the criminal penalties of § 6-2376. (1973 Ed., § 6-1831; Sept. 24, 1976, D.C. Law 1-85, title III, § 301, 23 DCR 2464; Mar. 16, 1978, D.C. Law 2-62, § 2, 24 DCR 5780; Aug. 2, 1983, D.C. Law 5-19, § 3, 30 DCR 3328.)

Legislative history of Law 1-85. — See note to § 6-2301.

Legislative history of Law 2-62. — See note to § 6-2302.

Subchapter IV. Licensing of Firearms Businesses.

§ 6-2341. Manufacture of firearms, destructive devices or ammunition prohibited; requirement for dealer's license.

(a) No person or organization shall manufacture any firearm, destructive device or parts thereof, or ammunition, within the District: Provided, that persons holding registration certificates may engage in hand loading, reloading, or custom loading ammunition for his registered firearms: Provided further, that such person may not hand load, reload, or custom load ammunition for others.

(b) No person or organization shall engage in the business of selling, purchasing, or repairing any firearm, destructive device, parts therefor, or ammunition, without first obtaining a dealer's license, and no licensee shall engage in the business of selling, purchasing, or repairing firearms which are unregistrable under § 6-2312, destructive devices, or parts therefor, except pursuant to a valid work or purchase order, for those persons specified in § 6-2311(b)(1). (1973 Ed., § 6-1841; Sept. 24, 1976, D.C. Law 1-85, title IV, § 401, 23 DCR 2464.)

Legislative history of Law 1-85. — See note to § 6-2301.

§ 6-2342. Qualifications for dealer's license; application; fee.

(a) Any person eligible to register a firearm under this chapter and who, if a registrant, has not previously failed to perform any of the duties imposed by this chapter; and, any person eligible under the acts of Congress to engage in such business, may obtain a dealer's license, or a renewal thereof, which shall be valid for a period of not more than 1 year from the date of issuance. The license required by this chapter, shall be in addition to any other license or licensing procedure required by law.

(b) Each application for a dealer's license and each application for renewal thereof shall be made on a form prescribed by the Chief, shall be sworn to or affirmed by the applicant, and shall contain:

(1) The information required by § 6-2313(a);

(2) The address where the applicant conducts or intends to conduct his business;

(3) Whether the applicant, prior to September 24, 1976, held a license to deal in deadly weapons in the District; and

(4) Such other information as the Chief may require, including fingerprints and photographs of the applicant, to carry out the purposes of this chapter.

(c) Each application for a dealer's license, or renewal shall be accompanied by a fee established by the Mayor: Provided, that such fee shall in the judgment of the Mayor, reimburse the District for the cost of services provided under this subchapter. (1973 Ed., § 6-1842; Sept. 24, 1976, D.C. Law 1-85, title IV, § 402, 23 DCR 2464.)

Section references. — This section is referred to in § 6-2344.

Legislative history of Law 1-85. — See note to § 6-2301.

§ 6-2343. Issuance of dealer's license; time period; corrections.

(a) Upon receipt of a properly executed application for a dealer's license, or renewal thereof, the Chief, upon determining through further inquiry, investigation, or otherwise, that the applicant is entitled and qualified under the provisions of this chapter thereto, shall issue a dealer's license. Each dealer's license shall be in duplicate and bear a unique dealer's license number, and such other information as the Chief determines is necessary to identify the applicant and premises. The duplicate of the dealer's license shall be delivered to the applicant and the Chief shall retain the original.

(b) The Chief shall approve or deny an application for a registration certificate within a 60-day period beginning on the date the Chief receives the application, unless good cause is shown, including nonreceipt of information from sources outside the District government. The Chief may hold in abeyance an application where there is any firearms revocation proceeding pending against such person.

(c) Upon receipt of a dealer's license, each applicant shall examine the same to ensure that the information thereon is correct. If the dealer's license is incorrect in any respect, the person named thereon shall return the same to the Chief with a signed statement showing the nature of the error. The Chief shall correct the error, if it occurred through administrative error. In the event the error resulted from information contained in the application, the applicant shall be required to file an amended application explaining the error in the original application. Each amended application shall be accompanied by a fee equal to that required for the original application.

(d) In the event the Chief learns of an error in a dealer's license, other than as provided in subsection (c) of this section, he may require the holder to return the dealer's license for correction. If the error resulted from information contained in the application, the person named therein shall be required to file an amended application as provided in subsection (c) of this section.

(e) Each dealer's license issued by the Chief shall be accompanied by a statement setting forth a dealer's duties under this chapter. (1973 Ed., § 6-1843; Sept. 24, 1976, D.C. Law 1-85, title IV, § 403, 23 DCR 2464.)

Legislative history of Law 1-85. — See note to § 6-2301.

§ 6-2344. Duties of licensed dealers; records required.

(a) Each person holding a dealer's license, in addition to any other requirements imposed by this chapter, the acts of Congress, and other law, shall:

- (1) Display the dealer's license in a conspicuous place on the premises;
- (2) Notify the Chief in writing:

(A) Of the loss, theft, or destruction of the dealer's license (including the circumstances, if known) immediately upon the discovery of such loss, theft, or destruction;

(B) Of a change in any of the information appearing on the dealer's license or required by § 6-2342 immediately upon the occurrence of any such change;

(3) Keep at the premises identified in the dealer's license a true and current record in book form of:

(A) The name, address, home phone, and date of birth of each employee handling firearms, ammunition, or destructive devices;

(B) Each firearm or destructive device received into inventory or for repair including the:

(i) Serial number, caliber, make, model, manufacturer's number (if any), dealer's identification number (if any), registration certificate number (if any) of the firearm, and similar descriptive information for destructive devices;

(ii) Name, address, and dealer's license number (if any) of the person or organization from whom the firearm or destructive device was purchased or otherwise received;

(iii) Consideration given for the firearm or destructive device, if any;

(iv) Date and time received by the licensee and in the case of repair, returned to the person holding the registration certificate; and

- (v) Nature of the repairs made;
- (C) Each firearm or destructive device sold or transferred including the:
 - (i) Serial number, caliber, make, model, manufacturer's number or dealer's identification number, and registration certificate number (if any) of the firearm or similar information for destructive devices;
 - (ii) Name, address, registration certificate number or license number (if any) of the person or organization to whom transferred;
 - (iii) The consideration for transfer; and
 - (iv) Time and date of delivery of the firearm or destructive device to the transferee;
- (D) Ammunition received into inventory including the:
 - (i) Brand and number of rounds of each caliber or gauge;
 - (ii) Name, address, and dealer's license or registration number (if any) of the person or organization from whom received;
 - (iii) Consideration given for the ammunition; and
 - (iv) Date and time of the receipt of the ammunition;
- (E) Ammunition sold or transferred including:
 - (i) Brand and number of rounds of each caliber or gauge;
 - (ii) Name, address and dealer's license number (if any) of the person or organization to whom sold or transferred;
 - (iii) If the purchaser or transferee is not a licensee, the registration certificate number of the firearm for which the ammunition was sold or transferred;
 - (iv) The consideration for the sale and transfer; and
 - (v) The date and time of sale or transfer.

(b) The records required by subsection (a) of this section shall upon demand be exhibited during normal business hours to any member of the Metropolitan Police Department.

(c) Each person holding a dealer's license shall, when required by the Chief in writing, submit on a form and for the periods of time specified, any record information required to be maintained by subsection (a) of this section, and any other information reasonably obtainable therefrom. (1973 Ed., § 6-1844; Sept. 24, 1976, D.C. Law 1-85, title IV, § 404, 23 DCR 2464.)

Section references. — This section is referred to in § 6-2345.

Legislative history of Law 1-85. — See note to § 6-2301.

§ 6-2345. Revocation of dealer's license.

A dealer's license shall be revoked if:

- (1) Any of the criteria in § 6-2344 is not currently met; or
- (2) The information furnished to the Chief on the application for a dealer's license proves to be intentionally false; or
- (3) There is a violation or omission of the duties, obligations, or requirements imposed by § 6-2344. (1973 Ed., § 6-1845; Sept. 24, 1976, D.C. Law 1-85, title IV, § 405, 23 DCR 2464.)

Legislative history of Law 1-85. — See note to § 6-2301.

§ 6-2346. Procedure for denial and revocation of dealer's license.

(a) If it appears to the Chief that an application for a dealer's license should be denied or that a dealer's license should be revoked, the Chief shall notify the applicant or registrant of the proposed denial or revocation briefly stating the reason or reasons therefor. Service may be made as provided for in § 6-2320(a). The applicant or dealer shall have 15 days from the date of service in which to submit further evidence in support of the application or qualifications to continue to hold a dealer's license, as the case may be: Provided, that if the applicant or dealer does not make such a submission within 15 days from the date of service, the applicant or dealer shall be deemed to have conceded the validity of the reason or reasons stated in the notice, and the denial or revocation shall become final.

(b) Within 10 days of the date upon which the Chief receives such a submission, the Chief shall serve upon the applicant or registrant in the manner provided in § 6-2320(a) notice of his final decision. The Chief's decision shall become effective at the expiration of the time within which to file a notice of appeal pursuant to the District of Columbia Administrative Procedure Act (D.C. Code, § 1-1501 et seq.) or, if such a notice of appeal is filed, at the time the final order or judgment of the District of Columbia Court of Appeals becomes effective.

(c) Within 45 days of a decision becoming effective, which is unfavorable to a licensee or to an applicant for a dealer's license, the licensee or applicant shall:

(1) If he is eligible to register firearms pursuant to this chapter, register such firearms in his inventory as are capable of registration pursuant to this chapter;

(2) Peaceably surrender to the Chief any firearms in his inventory which he does not register, and all destructive devices in his inventory in the manner provided for in § 6-2375;

(3) Lawfully remove from the District any firearm in his inventory which he does not register and all destructive devices and ammunition in his inventory for so long as he has an interest in them; or

(4) Otherwise lawfully dispose of any firearms in his inventory which he does not register and all destructive devices and ammunition in his inventory. (1973 Ed., § 6-1846; Sept. 24, 1976, D.C. Law 1-85, title IV, § 406, 23 DCR 2464; Mar. 16, 1978, D.C. Law 2-62, § 2, 24 DCR 5780.)

Legislative history of Law 1-85. — See note to § 6-2301.

Legislative history of Law 2-62. — See note to § 6-2302.

Contested case procedures apply. — Section 6-2320(b) and subsection (b) of this section

refer to the Court of Appeal's direct review jurisdiction under the Administrative Procedure Act (§ 1-1501 et seq.), which jurisdiction can only be exercised at the conclusion of "contested case" procedures. *McIntosh v. Washington*, App. D.C., 395 A.2d 744 (1978).

§ 6-2347. Display of firearms or ammunition by dealers; security; employees of dealers.

(a) No licensed dealer shall display any firearm or ammunition in windows visible from a street or sidewalk. All firearms, destructive devices, and ammunition shall be kept at all times in a securely locked place affixed to the premises except when being shown to a customer, being repaired, or otherwise being worked on.

(b) No licensee shall knowingly employ any person in his establishment if such person would not be eligible to register a firearm under this chapter. (1973 Ed., § 6-1847; Sept. 24, 1976, D.C. Law 1-85, title IV, § 407, 23 DCR 2464.)

Legislative history of Law 1-85. — See note to § 6-2301.

Cited in *Romero v. National Rifle Ass'n of Am.*, 749 F.2d 77 (D.C. Cir. 1984).

§ 6-2348. Identification number on firearm required before sale.

No licensee shall sell or offer for sale any firearm which does not have imbedded into the metal portion of such firearm a unique manufacturer's identification number or serial number, unless the licensee shall have imbedded into the metal portion of such firearm a unique dealer's identification number. (1973 Ed., § 6-1848; Sept. 24, 1976, D.C. Law 1-85, title IV, § 408, 23 DCR 2464.)

Legislative history of Law 1-85. — See note to § 6-2301.

§ 6-2349. Certain information obtained from or retained by dealers not to be used as evidence in criminal proceedings.

No information obtained from or retained by a licensed dealer to comply with this subchapter shall be used as evidence against such licensed dealer in any criminal proceeding with respect to a violation of this chapter occurring prior to or concurrently with the filing of such information: Provided, that this section shall not apply to any violation of § 22-2511, or of § 6-2374. (1973 Ed., § 6-1849; Sept. 24, 1976, D.C. Law 1-85, title IV, § 409, 23 DCR 2464; Mar. 16, 1978, D.C. Law 2-62, § 2, 24 DCR 5780; Aug. 2, 1983, D.C. Law 5-24, § 13, 30 DCR 3341.)

Legislative history of Law 1-85. — See note to § 6-2301.

Legislative history of Law 5-24. — See note to § 6-2321.

Legislative history of Law 2-62. — See note to § 6-2302.

Subchapter V. Sale and Transfer of Firearms, Destructive Devices, and Ammunition.

§ 6-2351. Sales and transfers prohibited.

No person or organization shall sell, transfer or otherwise dispose of any firearm, destructive device or ammunition in the District except as provided in § 6-2320(c), 6-2352, or 6-2375. (1973 Ed., § 6-1851; Sept. 24, 1976, D.C. Law 1-85, title V, § 501, 23 DCR 2464; Mar. 16, 1978, D.C. Law 2-62, § 2, 24 DCR 5780.)

Legislative history of Law 1-85. — See note to § 6-2301.

Legislative history of Law 2-62. — See note to § 6-2302.

§ 6-2352. Permissible sales and transfers.

(a) Any person or organization eligible to register a firearm may sell or otherwise transfer ammunition or any firearm, except those which are unregistrable under § 6-2312, to a licensed dealer.

(b) Any licensed dealer may sell or otherwise transfer:

(1) Ammunition, excluding restricted pistol bullets, and any firearm or destructive device which is lawfully a part of such licensee's inventory, to any nonresident person or business licensed under the acts of Congress and the jurisdiction where such person resides or conducts such business;

(2) Ammunition, including restricted pistol bullets, and any firearm or destructive device which is lawfully a part of such licensee's inventory to:

(A) Any other licensed dealer;

(B) Any law enforcement officer or agent of the District or the United States of America when such officer or agent is on duty, and acting within the scope of his duties when acquiring such firearm, ammunition, or destructive device, if the officer or agent has in his possession a statement from the head of his agency stating that the item is to be used in such officer's or agent's official duties.

(c) Any licensed dealer may sell or otherwise transfer a firearm except those which are unregistrable under § 6-2312, to any person or organization possessing a registration certificate for such firearm: Provided, that if the Chief denies a registration certificate, he shall so advise the licensee who shall thereupon: (1) Withhold delivery until such time as a registration certificate is issued, or, at the option of the purchaser; (2) declare the contract null and void, in which case consideration paid to the licensee shall be returned to the purchaser: Provided further, that this subsection shall not apply to persons covered by subsection (b) of this section.

(d) Except as provided in subsections (b) and (e) of this section, no licensed dealer shall sell or otherwise transfer ammunition unless:

(1) The sale or transfer is made in person; and

(2) The purchaser exhibits, at the time of sale or other transfer, a valid registration certificate, or in the case of a nonresident, proof that the weapon is lawfully possessed in the jurisdiction where such person resides;

(3) The ammunition to be sold or transferred is of the same caliber or gauge as the firearm described in the registration certificate, or other proof in the case of nonresident; and

(4) The purchaser signs a receipt for the ammunition which (in addition to the other records required under this chapter) shall be maintained by the licensed dealer for a period of 1 year from the date of sale.

(e) Any licensed dealer may sell ammunition to any person holding an ammunition collector's certificate on September 24, 1976: Provided, that the collector's certificate shall be exhibited to the licensed dealer whenever the collector purchases ammunition for his collection: Provided further, that the collector shall sign a receipt for the ammunition, which shall be treated in the same manner as that required under paragraph (4) of subsection (d) of this section. (1973 Ed., § 6-1852; Sept. 24, 1976, D.C. Law 1-85, title V, § 502, 23 DCR 2464; Mar. 16, 1978, D.C. Law 2-62, § 2, 24 DCR 5780; Aug. 2, 1983, D.C. Law 5-19, § 3, 30 DCR 3328.)

Section references. — This section is referred to in § 6-2351.

Legislative history of Law 1-85. — See note to § 6-2301.

Legislative history of Law 2-62. — See note to § 6-2302.

Legislative history of Law 5-19. — See note to § 6-2302.

Police equipment company sales regu-

lated but not prohibited. — Under this chapter a police equipment company would not be prohibited from selling handguns to qualified residents, but such sales would be subject to the Council's authority to regulate the conduct of the dealers of any dangerous or deadly weapons and to the standards set forth in this section. *McIntosh v. Washington*, App. D.C., 395 A.2d 744 (1978).

Subchapter VI. Possession of Ammunition.

§ 6-2361. Persons permitted to possess ammunition.

No person shall possess ammunition in the District of Columbia unless:

(1) He is a licensed dealer pursuant to subchapter IV;

(2) He is an officer, agent, or employee of the District of Columbia or the United States of America, on duty and acting within the scope of his duties when possessing such ammunition;

(3) He is the holder of the valid registration certificate for a firearm of the same gauge or caliber as the ammunition he possesses; except, that no such person shall possess restricted pistol bullets; or

(4) He holds an ammunition collector's certificate on September 24, 1976. (1973 Ed., § 6-1861; Sept. 24, 1976, D.C. Law 1-85, title VI, § 601, 23 DCR 2464; Mar. 16, 1978, D.C. Law 2-62, § 2, 24 DCR 5780; Aug. 2, 1983, D.C. Law 5-19, § 4, 30 DCR 3328.)

Legislative history of Law 1-85. — See note to § 6-2301.

Legislative history of Law 2-62. — See note to § 6-2302.

Legislative history of Law 5-19. — See note to § 6-2302.

Constitutionality. — This section and §§ 6

2311 and 22-3204 do not violate the Second Amendment. *Sandidge v. United States*, App. D.C., 520 A.2d 1057, cert. denied, 484 U.S. 868, 108 S. Ct. 193, 98 L. Ed. 2d 145 (1987).

Purpose of section. — Congress promulgated this section in an effort to curtail the flow of arms on the public streets, and thereby

reduce the number of resultant injuries and deaths. *Billinger v. United States*, App. D.C., 425 A.2d 1304 (1981).

Focus of chapter. — It is absolutely clear from this section and §§ 6-2311, 6-2313, 6-2323 and 6-2375 and the language and phrasing of other provisions of the Firearms Control Regulations Act of 1975 that the Act focuses equally, if not more, on the person than on the firearm. This dual emphasis fully comports with the purpose of the Act to freeze the handgun population within the District of Columbia by expanding and strengthening the then preexisting firearm registration standards and to prescribe criminal penalties for the violation of its provisions. *District of Columbia v. Rowan*, 116 WLR 2353 (Super. Ct. 1988).

Law enforcement personnel. — This section allows authorized law enforcement personnel to carry ammunition while on duty. *Timus v. United States*, App. D.C., 406 A.2d 1269 (1979).

Possession of unregistrable firearms and ammunition prohibited. — Although neither a machine gun nor its ammunition is registrable, it is a violation of the registration statute to possess them. *United States v. Smith*, 118 WLR 2277 (Super. Ct. 1990).

Registration held by employer imputed to employee. — When a person is issued a firearm by an employer which holds a registration certificate for that firearm under § 6-2311(a), and is required by law or regulation to possess the issued firearm while off duty, the registration held by the employer will be imputed to the employee for the purposes of paragraph (3) of this section. *Timus v. United States*, App. D.C., 406 A.2d 1269 (1979).

Requisite articulable suspicion sufficient to warrant stopping suspect and search for weapons. — See *Lawrence v. United States*, App. D.C., 509 A.2d 614 (1986).

Possession of ammunition is presumptively unlawful. *Logan v. United States*, App. D.C., 489 A.2d 485 (1985).

Burden of proof. — The government is required to prove only that a defendant possessed ammunition, as defined by § 6-2302(2), in order to establish the essential element of the offense of unlawful possession of ammunition. *Logan v. United States*, App. D.C., 489 A.2d 485 (1985).

Intent to exercise dominion or control over contraband may be inferred from the presence of contraband in an automobile, in plain view, conveniently accessible to the defendant. In re F.T.J., App. D.C., 578 A.2d 1161 (1990).

Violations of provisions are general intent crimes. — Violations of §§ 22-3204, 6-2311, and 6-2361 are general intent crimes, and no specific intent to use the gun (or the ammunition) need be proved in order to obtain a conviction under any of the three statutes. A

claim of mistake of law, without more, cannot be relied upon by a defendant charged with a general intent crime. *Bsharah v. United States*, App. D.C., 646 A.2d 993 (1994).

In order to sustain conviction for constructive possession of unregistered weapon and ammunition the government must prove two elements: Knowledge of the presence of the pistol or ammunition and the existence of dominion and control over them. *Easley v. United States*, App. D.C., 482 A.2d 779 (1984); *Logan v. United States*, App. D.C., 489 A.2d 485 (1985).

The government failed to present evidence which could permit a reasonable mind to fairly conclude beyond a reasonable doubt that defendants knew of an unregistered loaded pistol where none of them had actual possession. *Curry v. United States*, App. D.C., 520 A.2d 255 (1987).

An implicit requirement for constructive possession is that the accused have the intent to exercise dominion or control over the object in question. In re L.A.V., App. D.C., 578 A.2d 708 (1990).

Defendant may only rely on paragraph (3) as an affirmative defense. *Logan v. United States*, App. D.C., 489 A.2d 485 (1985).

Evidence sufficient to support conviction. — Defendant's ownership of vehicle where pistol was found, his operation of that vehicle, and circumstances showing his knowledge that pistol was in the trunk of the vehicle are sufficient to sustain conviction under this section. *United States v. Duncan*, 115 WLR 2517 (Super. Ct. 1987); *United States v. Joseph*, 892 F.2d 118 (D.C. Cir. 1989); *Thompson v. United States*, App. D.C., 567 A.2d 907 (1989).

Fact that the protruding end of a machine gun lay unconcealed at defendant's feet and so close to him that, as the trial judge observed, he would have virtually kicked it during the 15 to 20 minutes he was in the car, and additional circumstances relied on by the trial judge, were sufficient to support finding of constructive possession. In re F.T.J., App. D.C., 578 A.2d 1161 (1990).

Evidence insufficient to support conviction on either a theory of constructive possession or a theory of aiding and abetting. In re L.A.V., App. D.C., 578 A.2d 708 (1990).

Evidence did not establish a sufficient association between the individual defendants and the weapon or live rounds where the case against the defendants consisted of their proximity to a pistol and ammunition in plain view in a sordid crack house, when both were found not guilty of any connection with the drugs. In re T.M., App. D.C., 577 A.2d 1149 (1990).

Cited in *Stover v. United States*, App. D.C., 410 A.2d 188 (1979); *Price v. United States*, App. D.C., 429 A.2d 514 (1981); *United States v. McCarthy*, App. D.C., 448 A.2d 267 (1982); *Brooks v. United States*, App. D.C., 458 A.2d 66

(1983); Reid v. United States, App. D.C., 466 A.2d 433 (1983); Purce v. United States, App. D.C., 482 A.2d 772 (1984); Jackson v. United States, App. D.C., 498 A.2d 185 (1985); Hammond v. United States, App. D.C., 501 A.2d 796 (1985); Marbury v. United States, App. D.C., 540 A.2d 114 (1985); United States v. Mudd, 817 F.2d 840 (D.C. Cir. 1987); United States v. Jackson, 824 F.2d 21 (D.C. Cir. 1987); Hinnant v. United States, App. D.C., 520 A.2d 292 (1987); Hollingsworth v. United States, App. D.C., 531 A.2d 973 (1987); Davis v. United States, App. D.C., 532 A.2d 656 (1987); McGee v. United States, App. D.C., 533 A.2d 1268 (1987); Jones v. United States, App. D.C., 544 A.2d 1250 (1988); Brown v. United States, App. D.C., 546 A.2d 390 (1988); Deneal v. United States, App. D.C., 551 A.2d 1312 (1988); Franklin v. United States, App. D.C., 555 A.2d 1010 (1989); Staten v. United States, App. D.C., 562 A.2d 90 (1989); Williams v. United States, App. D.C., 576 A.2d 700 (1990); United States v. Alston, App. D.C., 580 A.2d 587 (1990); United States v. Alston, 118 WLR 819 (Super. Ct. 1990); United States v. Barnes, 118 WLR 1709 (Super. Ct. 1990); Washington v. United States, App. D.C., 585 A.2d 167 (1991); Irby v. United States, App. D.C., 585 A.2d 759 (1991); Key v. United States, App. D.C., 587 A.2d 1072 (1991); Brown v. United States, App. D.C., 589 A.2d 434 (1991); Galberth v. United States, App. D.C., 590 A.2d 990 (1991); Clark v. United States, App. D.C., 593 A.2d 186 (1991); Chang

Yoon v. United States, App. D.C., 594 A.2d 1056 (1991); Gomez v. United States, App. D.C., 597 A.2d 884 (1991); In re D.A., App. D.C., 597 A.2d 1331 (1991); Jamison v. United States, App. D.C., 600 A.2d 65 (1991); Freeman v. United States, App. D.C., 600 A.2d 1070 (1991); Burnette v. United States, App. D.C., 600 A.2d 1082 (1991); United States v. Hobbs, 119 WLR 673 (Super. Ct. 1991); Thomas v. United States, App. D.C., 602 A.2d 647 (1992); Williamson v. United States, App. D.C., 607 A.2d 471 (1992), cert. denied, — U.S. —, 114 S. Ct. 96, 126 L. Ed. 2d 63 (1993); Harper v. United States, App. D.C., 608 A.2d 152 (1992); Yoon v. United States, App. D.C., 610 A.2d 1388 (1992); In re D.E.W., App. D.C., 612 A.2d 194 (1992); Farmer v. United States, App. D.C., 616 A.2d 1241 (1992), cert. denied, — U.S. —, 113 S. Ct. 1958, 123 L. Ed. 2d 661 (1993); Ford v. United States, App. D.C., 616 A.2d 1245 (1992); United States v. Harris, App. D.C., 617 A.2d 189 (1992); Whitaker v. United States, App. D.C., 617 A.2d 499 (1992); United States v. Bellamy, App. D.C., 619 A.2d 515 (1993); Norman v. United States, App. D.C., 623 A.2d 1165 (1993); United States v. Harris, App. D.C., 629 A.2d 481 (1993); Ransom v. United States, App. D.C., 630 A.2d 170 (1993); Hilliard v. United States, App. D.C., 638 A.2d 698 (1994); Allen v. United States, App. D.C., 649 A.2d 548 (1994); United States v. Ruffin, 40 F.3d 1296 (D.C. Cir. 1994); United States v. Maiden, 870 F. Supp. 359 (D.D.C. 1994).

Subchapter VII. Miscellaneous Provisions.

§ 6-2371. Security mortgages, deposits, or pawns with firearms, destructive devices, or ammunition prohibited; loan or rental of firearms, destructive devices, or ammunition prohibited.

(a) No firearm, destructive device, or ammunition shall be security for, or be taken or received by way of any mortgage, deposit, pledge, or pawn.

(b) No person may loan, borrow, give, or rent to or from another person, any firearm, destructive device, or ammunition. (1973 Ed., § 6-1871; Sept. 24, 1976, D.C. Law 1-85, title VII, § 701, 23 DCR 2464.)

Legislative history of Law 1-85. — See note to § 6-2301.

Scope of prohibition of subsection (b). — The provisions of subsection (b) prohibiting any person from lending, giving or renting a firearm to another person, even where that person lending, giving or renting the firearm is a valid holder of a registration certificate for the firearm would apply whether the recipient is a

relative or a friend. Further, it would appear that even the wife or grown child of a holder of a valid registration certificate would not be protected from prosecution if she or he were to exercise control over the firearm or take possession of it, except to voluntarily surrender it to the Chief of Police or his designated agent pursuant to Section 6-2375. District of Columbia v. Rowan, 116 WLR 2353 (Super. Ct. 1988).

§ 6-2372. Firearms required to be unloaded and disassembled or locked.

Except for law enforcement personnel described in § 6-2311(b)(1), each registrant shall keep any firearm in his possession unloaded and disassembled or bound by a trigger lock or similar device unless such firearm is kept at his place of business, or while being used for lawful recreational purposes within the District of Columbia. (1973 Ed., § 6-1872; Sept. 24, 1976, D.C. Law 1-85, title VII, § 702, 23 DCR 2464.)

Legislative history of Law 1-85. — See note to § 6-2301.

Home-business distinction not violative of equal protection. — Since there was a clear rational basis for distinguishing between a home and a business establishment in the firearms control statute, the classification in this section which allows individuals to maintain an assembled firearm at their places of business but not at home relates to the purpose for which it was made and lacks the kind of discrimination from which the equal protection

clause affords protection. *McIntosh v. Washington*, App. D.C., 395 A.2d 744 (1978).

Places of business. — A personal residence used for conducting business such as writing books and articles for publication was not the type of business establishment contemplated by the Council of the District of Columbia in enacting this section. *District of Columbia v. Rowan*, 116 WLR 2353 (Super. Ct. 1988).

Cited in *Romero v. National Rifle Ass'n of Am.*, 749 F.2d 77 (D.C. Cir. 1984).

§ 6-2373. Firing ranges.

Any person operating a firing range in the District, shall in addition to any other requirement imposed by law, register with the Chief, on a form prescribed by him, which shall include the business name of the range, the location, the names and home addresses of the owners and principal officers, the types of weapons fired there, the number and types of weapons normally stored there, the days and hours of operation, and such other information as the Chief shall require. (1973 Ed., § 6-1873; Sept. 24, 1976, D.C. Law 1-85, title VII, § 703, 23 DCR 2464.)

Legislative history of Law 1-85. — See note to § 6-2301.

§ 6-2374. False information; forgery or alteration.

(a) It shall be unlawful for any person purchasing any firearm or ammunition, or applying for any registration certificate or dealer's license under this chapter, or in giving any information pursuant to the requirements of this chapter, to knowingly give false information or offer false evidence of identity.

(b) It shall be unlawful for anyone to forge or alter any application, registration certificate, or dealer's license submitted, retained or issued under this chapter. (1973 Ed., § 6-1874; Sept. 24, 1976, D.C. Law 1-85, title VII, § 704, 23 DCR 2464.)

Section references. — This section is referred to in §§ 6-2321 and 6-2349.

Legislative history of Law 1-85. — See note to § 6-2301.

§ 6-2375. Voluntary surrender of firearms, destructive devices, or ammunition; immunity from prosecution; determination of evidentiary value of firearm.

(a) If a person or organization within the District voluntarily and peaceably delivers and abandons to the Chief any firearm, destructive device or ammunition at any time, such delivery shall preclude the arrest and prosecution of such person on a charge of violating any provision of this chapter with respect to the firearm, destructive device, or ammunition voluntarily delivered. Delivery under this section may be made at any police district, station, or central headquarters, or by summoning a police officer to the person's residence or place of business. Every firearm and destructive device to be delivered and abandoned to the Chief under this section shall be unloaded and securely wrapped in a package, and, in the case of delivery to a police facility, the package shall be carried in open view. No person who delivers and abandons a firearm, destructive device, or ammunition under this section, shall be required to furnish identification, photographs, or fingerprints. No amount of money shall be paid for any firearm, destructive device, or ammunition delivered and abandoned under this section.

(b) Whenever any firearm, destructive device, or any ammunition is surrendered under this section or pursuant to § 6-2320(c)(1), the Chief shall inquire of the United States Attorney and the Corporation Counsel for the District whether such firearm is needed as evidence: Provided, that if the same is not needed as evidence, it shall be destroyed. (1973 Ed., § 6-1875; Sept. 24, 1976, D.C. Law 1-85, title VII, § 705, 23 DCR 2464.)

Section references. — This section is referred to in §§ 6-2320, 6-2346, and 6-2351.

Legislative history of Law 1-85. — See note to § 6-2301.

Focus of chapter. — It is absolutely clear from the provisions of this section and §§ 6-2311, 6-2313, 6-2323 and 6-2361 and the language and phrasing of other provisions of the Firearms Control Regulation Act of 1975 that the Act focuses equally, if not more, on the person than on the firearm. This dual emphasis fully comports with the purpose of the Act to freeze the handgun population within the District of Columbia by expanding and strengthening the then preexisting firearm registration standards and to prescribe criminal penalties for the violation of its provisions. *District of Columbia v. Rowan*, 116 WLR 2353 (Super. Ct. 1988).

Any firearm not properly in compliance with this chapter is subject to destruction. *Kuhn v. Cissel*, App. D.C., 409 A.2d 182 (1979).

Even though lawfully possessed in another state. — Persons who bring guns into the District resulting in a violation of the Firearms Control Act of 1975 are not entitled to recover possession when they have been sur-

rendered to the police even though they may lawfully possess them in another state. *Kuhn v. Cissel*, App. D.C., 409 A.2d 182 (1979).

Ownership or consensual possession does not make a firearm exempt from the operation of subsection (b) of this section. *Kuhn v. Cissel*, App. D.C., 409 A.2d 182 (1979).

Scope of immunity. — This section as written plainly states the intent of the Council to restrict its grant of immunity to violations of the Firearms Control Regulations Act of 1975; thus, immunity under this section would not afford protection to a defendant also charged under §§ 22-3204 and 22-3214. *Stein v. United States*, App. D.C., 532 A.2d 641 (1987), cert. denied, 485 U.S. 1010, 108 S. Ct. 1477, 99 L. Ed. 2d 705 (1988).

Capitol Police not designated agents. — Capitol Police officers are not and have never been designated agents of the Chief of the Metropolitan Police for the purpose of receiving firearms surrendered under subsection (a) of this section. *Stein v. United States*, App. D.C., 532 A.2d 641 (1987), cert. denied, 485 U.S. 1010, 108 S. Ct. 1477, 99 L. Ed. 2d 705 (1988).

Return of surrendered firearm not permitted. — Subsection (a) of this section pro-

vides immunity for one who surrenders or delivers a weapon. It does not state that if such immunity is unnecessary, the weapon is to be returned to the owner. *Kuhn v. Cissel*, App. D.C., 409 A.2d 182 (1979).

Surrender insufficient. — Defendant's surrender of firearms to a Capitol Police officer upon his entry into a Senate building did not afford the defendant immunity from prosecution under this chapter because Capitol Police officers are not designated agents of the Chief of Metropolitan Police for the purpose of receiving firearms surrendered under subsection (a) of this section; the Senate building is not a place designated under subsection (a) for such a surrender; and the defendant did not have the intent to abandon the weapons but only to surrender their possession while in the Senate building. *Stein v. United States*, App. D.C., 532 A.2d 641 (1987), cert. denied, 485 U.S. 1010, 108 S. Ct. 1477, 99 L. Ed. 2d 705 (1988).

Prosecution under this section is not barred where the gun was surrendered following the

shooting incident at the defendant's home after the officer asked him for the firearm, and there was no testimony that the defendant affirmatively took steps to obtain the firearm and of his own initiative to deliver and abandon it for all times. *District of Columbia v. Rowan*, 116 WLR 2353 (Super. Ct. 1988).

Immunity to be resolved before trial. — A claim for immunity under subsection (a) must be resolved by the court before trial. *Chang Yoon v. United States*, App. D.C., 594 A.2d 1056 (1991), modified on other grounds, App. D.C., 610 A.2d 1388 (1992).

A denial of a motion to dismiss on subsection (a) grounds may be appealed interlocutorily. *Chang Yoon v. United States*, App. D.C., 594 A.2d 1056 (1991), modified on other grounds, App. D.C., 610 A.2d 1388 (1992).

Cited in *Wilson v. United States*, App. D.C., 590 A.2d 1002, cert. denied, 501 U.S. 1257, 111 S. Ct. 2906, 115 L. Ed. 2d 1069 (1991); *Yoon v. United States*, App. D.C., 610 A.2d 1388 (1992).

§ 6-2376. Penalties.

Any person convicted of a violation of any provision of this chapter shall be fined not more than \$1,000 or imprisoned for not more than 1 year, or both; except that:

(1) A person who knowingly or intentionally sells, transfers, or distributes a firearm, destructive device, or ammunition to a person under 18 years of age shall be fined not more than \$10,000 or imprisoned for not more than 10 years, or both.

(2)(A) Except as provided in subparagraph (B) of this paragraph, any person who is convicted a second time for possessing an unregistered firearm shall be fined not more than \$5,000 or imprisoned not more than 5 years, or both.

(B) A person who in the person's dwelling place, place of business, or on other land possessed by the person, possesses a pistol, or firearm that could otherwise be registered, shall be fined not more than \$1,000 or imprisoned not more than 1 year, or both. (1973 Ed., § 6-1876; Sept. 24, 1976, D.C. Law 1-85, title VII, § 706, 23 DCR 2464; Mar. 5, 1981, D.C. Law 3-147, § 2, 27 DCR 4882; Aug. 20, 1994, D.C. Law 10-151, § 301, 41 DCR 2608.)

Section references. — This section is referred to in §§ 6-2331 and 6-2378.

Effect of amendments. — D.C. Law 10-151 rewrote this section.

Emergency act amendments. — For temporary amendment of section, see § 301 of the Omnibus Criminal Justice Reform Emergency Amendment Act of 1994 (D.C. Act 10-255, June 22, 1994, 41 DCR 4286).

Legislative history of Law 1-85. — See note to § 6-2301.

Legislative history of Law 3-147. — Law 3-147, the "Firearms Penalty Act of 1980," was

introduced in Council and assigned Bill No. 3-325, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on September 30, 1980 and October 14, 1980, respectively. Signed by the Mayor on October 29, 1980, it was assigned Act No. 3-272 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-151. — Law 10-151, the "Omnibus Criminal Justice Reform Amendment Act of 1994," was introduced in Council and assigned Bill No. 10-98, which was referred to the Committee on the Judiciary. The

Bill was adopted on first and second readings on March 29, 1994, and April 12, 1994, respectively. Signed by the Mayor on May 4, 1994, it was assigned Act No. 10-238 and transmitted to both Houses of Congress for its review. D.C. Law 10-151 became effective on August 20, 1994.

Knowledge of duty to register firearms is not required for conviction of failure to register. *McIntosh v. Washington*, App. D.C., 395 A.2d 744 (1978).

Cited in *Timus v. United States*, App. D.C., 406 A.2d 1269 (1979); *United States v. Ward*, App. D.C., 438 A.2d 201 (1981); *United States v. Covington*, App. D.C., 459 A.2d 1067 (1983); *Jackson v. United States*, App. D.C., 498 A.2d 185 (1985); *United States v. Payne*, 805 F.2d 1062 (D.C. Cir. 1986); *District of Columbia v. Rowan*, 116 WLR 2353 (Super. Ct. 1988); *Edwards v. United States*, App. D.C., 619 A.2d 33 (1993); *Ransom v. United States*, App. D.C., 630 A.2d 170 (1993).

§ 6-2377. Public education program.

The Chief shall carry on a suitable publicity program designed to inform the citizens of the District of the provisions of this chapter and the rights and obligations created by it. (1973 Ed., § 6-1877; Sept. 24, 1976, D.C. Law 1-85, title VII, § 707, DCR 2464.)

Legislative history of Law 1-85. — See note to § 6-2301.

§ 6-2378. Construction of chapter.

Nothing in this chapter shall be construed, or applied to necessarily require, or excuse noncompliance with any provision of any federal law. This chapter and the penalties prescribed in § 6-2376, for violations of this chapter, shall not supersede but shall supplement all statutes of the District and the United States in which similar conduct is prohibited or regulated. (1973 Ed., § 6-1878; Sept. 24, 1976, D.C. Law 1-85, title VII, § 709, 23 DCR 2464; Mar. 16, 1978, D.C. Law 2-62, § 2, 24 DCR 5780.)

Legislative history of Law 1-85. — See note to § 6-2301.

Cited in *United States v. Duncan*, 115 WLR 2517 (Super. Ct. 1987).

Legislative history of Law 2-62. — See note to § 6-2302.

§ 6-2379. Applicability of District of Columbia Administrative Procedure Act.

The provisions of the District of Columbia Administrative Procedure Act (D.C. Code, § 1-1501 et seq.) shall apply to each proceeding, decision, or other administrative action specified in this chapter, unless otherwise specifically provided. (1973 Ed., § 6-1879; Sept. 24, 1976, D.C. Law 1-85, title VII, § 710, 23 DCR 2464.)

Legislative history of Law 1-85. — See note to § 6-2301.

Administrative Procedure Act applies without exception. — Nowhere in this chap-

ter is it specifically provided that the Administrative Procedure Act (§ 1-1501 et seq.) shall not apply. *McIntosh v. Washington*, App. D.C., 395 A.2d 744 (1978).

§ 6-2380. Severability.

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of this chapter and the application of such provision to other persons not similarly situated or to other circumstances shall not be affected thereby. (1973 Ed., § 6-1880; Sept. 24, 1976, D.C. Law 1-85, title VII, § 711, 23 DCR 2464.)

Legislative history of Law 1-85. — See note to § 6-2301.

Subchapter VIII. Illegal Firearm Sale and Distribution; Strict Liability.

§ 6-2381. Definitions.

For the purposes of this subchapter, the term:

(1) “Dealer” means:

(A) Any person engaged in the business of selling firearms at wholesale or retail;

(B) Any person engaged in the business of repairing firearms or of making or fitting special barrels, stocks, or trigger mechanisms to firearms; or

(C) Any person who is a pawnbroker who takes or receives by way of pledge or pawn, any firearm as security for the payment or repayment of money.

(2) “Engaged in the business” means:

(A) A person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms. The term “engaged in business” shall not include a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of this personal collection of firearms; or

(B) A person who devotes time, attention, and labor to importing firearms as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the firearms imported.

(3) “Firearm” shall have the same meaning as in § 6-2302(9).

(4) “Illegal sale” means:

(A) Failure to establish proof of the purchaser’s residence in a jurisdiction where the purchase of the weapon is legal or ignoring proof of the purchaser’s residence in the District of Columbia;

(B) Failure to comply with District of Columbia registration and waiting requirements prior to delivery of the firearm to the purchaser when proof of District of Columbia residence is provided;

(C) Failure to maintain full, complete, and accurate records of firearm sales as required by local, state, and federal law; or

(D) Knowingly and willfully maintaining false records with the intent to misrepresent the name and address of persons purchasing firearms, or the type of firearm sold to those persons.

(5) "Importer" means any person engaged in the business of importing or bringing firearms or ammunition into the United States for purposes of sale or distribution.

(6) "Law enforcement agency" means a federal, state, or local law enforcement agency, state militia, or an agency of the United States government.

(7) "Law enforcement officer" means any employee or agent of a law enforcement agency who is authorized to use a firearm in the course of employment.

(8) "Manufacturer" means any person in business to manufacture or assemble a firearm or ammunition for sale or distribution.

(9) "Pawnbroker" means any person whose business or occupation includes the taking or receiving, by way of pledge or pawn, of any firearm as security for the payment or repayment of money. (June 11, 1992, D.C. Law 9-115, § 2, 39 DCR 3182.)

Legislative history of Law 9-115. — Law 9-115, the "Illegal Firearm Sale and Distribution Strict Liability Act of 1992," was introduced in Council and assigned Bill No. 9-87, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on March 3, 1992, and April 7, 1992, respectively. Signed by the Mayor on April 24, 1992, it was assigned Act No. 9-189 and transmitted to both Houses of Congress for its review. D.C. Law 9-115 became effective on June 11, 1992.

Application of Law 9-115. — Section 7 of D.C. Law 9-115 provided that the act shall only apply to the discharge of a firearm in the District of Columbia that is sold, loaned, leased, or rented after the effective date of this act.

Mayor authorized to issue rules. — Section 6 of D.C. Law 9-115 provided that the Mayor, pursuant to subchapter I of Chapter 15 of Title 1, shall issue rules to implement the provisions of the act.

Delegation of Authority Pursuant to D.C. Law 9-115, the "Illegal Firearm Sale and Distribution Strict Liability Act of 1992." — See Mayor's Order 94-72, March 15, 1994 (41 DCR 1571).

Editor's notes. — Due to the addition of subchapter VIII of this chapter consisting of §§ 6-2381 through 6-2384 by D.C. Law 9-115, former subchapter VIII of this chapter consisting of §§ 6-2391 through 6-2393 enacted by D.C. Law 8-263 was redesignated as subchapter IX of this chapter.

§ 6-2382. Liability.

(a) Any manufacturer, importer, or dealer of a firearm who can be shown by a preponderance of the evidence to have knowingly and willfully engaged in the illegal sale of a firearm shall be held strictly liable in tort, without regard to fault and without regard to either: (1) an intent to interfere with a legally protected interest; or (2) a breach of duty to exercise reasonable care, for all direct and consequential damages that arise from bodily injury or death if the bodily injury or death proximately results from the discharge of the firearm in the District of Columbia, regardless of whether or not the person operating the firearm is the original, illegal purchaser.

(b) Any individual who can be shown by a preponderance of the evidence to have knowingly and willfully engaged in the illegal sale, loan, lease, or rental of a firearm for money or anything of value shall be held strictly liable in tort, without regard to fault and without regard to either: (1) an intent to interfere with a legally protected interest; or (2) a breach of duty to exercise reasonable care, for all direct and consequential damages that arise from bodily injury or death if the bodily injury or death proximately results from the discharge of the

firearm in the District of Columbia regardless of whether or not the person operating the firearm is the original, illegal purchaser.

(c) Nothing in this subchapter shall relieve from liability any person who commits a crime, is negligent, or who might otherwise be liable for acts committed with the firearm. (June 11, 1992, D.C. Law 9-115, § 3, 39 DCR 3182.)

Legislative history of Law 9-115. — See note to § 6-2381.

Application of Law 9-115. — See note to § 6-2381.

§ 6-2383. Exemptions.

(a) No firearm originally distributed to a law enforcement agency or a law enforcement officer shall provide the basis for liability under this subchapter.

(b) No action may be brought pursuant to this subchapter by a person who can be shown by a preponderance of the evidence to have committed a self-inflicted injury or by a person injured by a firearm while committing a crime, attempting to commit a crime, engaged in criminal activity, or engaged in a delinquent act.

(c) No action may be brought pursuant to this subchapter by a person who can be shown by a preponderance of the evidence to be engaged in the sale or distribution of illegal narcotics.

(d) No action may be brought pursuant to this subchapter by a person who either: (1) assumed the risk of the injury that occurred; or (2) negligently contributed to the injury that occurred. (June 11, 1992, D.C. Law 9-115, § 4, 39 DCR 3182.)

Legislative history of Law 9-115. — See note to § 6-2381.

Application of Law 9-115. — See note to § 6-2381.

§ 6-2384. Firearms Bounty Fund.

(a) There is established a fund to be known as the Firearms Bounty Fund ("Fund") to be administered by the Metropolitan Police Department. The Fund shall be operated as a proprietary fund and shall consist of monies appropriated to the Fund, federal grants to the Fund, or private monies donated to the Fund.

(b) Disbursements from the Fund shall be used exclusively for the payment of cash rewards to persons who provide District of Columbia law enforcement agencies with tips that lead to the adjudication or conviction of:

(1) A person or entity engaged in the illegal sale, rental, lease, or loan of a firearm in exchange for money or other thing of value; or

(2) A person who has committed a crime with a firearm.

(c) The amount of each cash reward shall be determined at the discretion of the Chief of the Metropolitan Police Department and the cash reward may range up to \$100,000 per tip.

(d) The Chief of the Metropolitan Police Department shall report annually to the Mayor and Council all income and expenditures of the Fund.

(e) The Mayor, by a proposed notice to the Council, may terminate the Fund if the Mayor determines that the Fund is no longer necessary to pay cash rewards.

(f) If monies exist in the Fund at the time of its termination, the monies shall be deposited in the General Fund of the District of Columbia.

(g) The proposed notice to terminate the Fund shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove by resolution within the 45-day review period, the proposed notice to terminate the Fund shall be deemed approved. (June 11, 1992, D.C. Law 9-115, § 5, 39 DCR 3182.)

Legislative history of Law 9-115. — See **Application of Law 9-115.** — See note to note to § 6-2381. § 6-2381.

Subchapter IX. Assault Weapons Manufacturing Strict Liability.

§ 6-2391. Definitions.

For the purposes of this subchapter, the term:

(1) "Assault weapon" includes the following weapons:

(A) Norinco, Mitchell, and Poly Technologies Avtomat Kalashnikovs (all models);

(B) Action Arms Israeli Military Industries UZI and Galil;

(C) Beretta AR-70 (SC-70);

(D) Colt AR-15 and CAR-15;

(E) Fabrique Nationale FN/FAL, FN/LAR, and FNC;

(F) MAC 10 and MAC 11;

(G) Steyr AUG;

(H) INTRATEC TEC-9; and

(I) Street Sweeper and Striker 12.

(2) "Handgun" means a firearm with a barrel less than 12 inches in length at the time of manufacture.

(3) "Dealer" and "importer" shall have the same meaning as in 18 U.S.C. § 921.

(4) "Machine gun" shall have the same meaning as in paragraph (10) of § 6-2302.

(5) "Manufacturer" means any person in business to manufacture or assemble a firearm or ammunition for sale or distribution.

(6) "Law enforcement agency" means a federal, state, or local law enforcement agency, state militia, or an agency of the United States government.

(7) "Law enforcement officer" means any officer or agent of an agency defined in paragraph (6) of this section who is authorized to use a handgun or machine gun in the course of his or her work. (Mar. 6, 1991, D.C. Law 8-263, § 3, 37 DCR 8482.)

Legislative history of Law 8-263. — Law 8-263, the "Assault Weapon Manufacturing Strict Liability Act of 1990," was introduced in Council and assigned Bill No. 8-132, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 27, 1989, and December 11, 1990, respectively. Signed by the Mayor on December 17, 1990, it was assigned Act No. 8-289 and transmitted to both Houses of Congress for its review. D.C. Law 8-263 became effective March 6, 1991.

Repeal and revival of Law 8-263. — D.C. Law 8-263 was temporarily repealed by Emergency Act 9-1, § 2, the Assault Weapon Manufacturing Strict Liability Act of 1990 Emergency Repealer Act of 1991 (D.C. Act 9-1, February 15, 1991, 38 DCR 1457). Section 2 of D.C. Law 9-3 temporarily repealed D.C. Law 8-263. Section 3(b) of D.C. Law 9-3 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Assault Weapon Manufacturing Strict Liability Act of 1990 Repealer Act of 1991, whichever occurs first.

§ 6-2392. Liability.

Any manufacturer, importer, or dealer of an assault weapon or machine gun shall be held strictly liable in tort, without regard to fault or proof of defect, for all direct and consequential damages that arise from bodily injury or death if the bodily injury or death proximately results from the discharge of the assault weapon or machine gun in the District of Columbia. (Mar. 6, 1991, D.C. Law 8-263, § 4, 37 DCR 8482; Oct. 7, 1994, D.C. Law 10-194, § 3(a), 41 DCR 4283.)

Effect of amendments. — D.C. Law 10-194 inserted "or machine gun" twice.

Legislative history of Law 8-263. — See note to § 6-2391.

Legislative history of Law 10-194. — Law 10-194, the "Repeat Offender Life Without Parole Amendment Act of 1994," was introduced in Council and assigned Bill No. 10-478, which was referred to the Committee on the Judiciary.

Repeal of Act 9-32. — D.C. Act 9-32, the Assault Weapon Manufacturing Strict Liability Act of 1990 Repealer Act of 1991, May 17, 1991, 38 DCR 3380, was repealed by Referendum 006, certified by the Board of Elections and Ethics November 18, 1991.

Application of Law 8-263. — Section 6 of D.C. Law 8-263, as amended by § 3(b) of D.C. Law 10-194, provided that the act shall apply only to the discharge of an assault weapon that is manufactured, imported, or distributed after Mar. 6, 1991, and to the discharge of a machine gun that is manufactured, imported, or distributed after Oct. 7, 1994.

Findings of Council. — Section 2 of D.C. Law 8-263 provided findings of Council.

Editor's notes. — Due to the addition of subchapter VIII of this chapter consisting of §§ 6-2381 through 6-2384 by D.C. Law 9-115, former subchapter VIII of this chapter consisting of §§ 6-2391 through 6-2393 enacted by D.C. Law 8-263 was redesignated as subchapter IX of this chapter.

The Bill was adopted on first and second readings on June 7, 1994, and June 21, 1994, respectively. Signed by the Mayor on June 21, 1994, it was assigned Act No. 10-254 and transmitted to both Houses of Congress for its review. D.C. Law 10-194 became effective on October 7, 1994.

Application of Law 8-263. — See note to § 6-2391.

§ 6-2393. Exemptions.

(a) No assault weapon originally distributed to a law enforcement agency or a law enforcement officer shall provide the basis for liability under this subchapter.

(b) No action may be brought pursuant to this subchapter by a person injured by an assault weapon while committing a crime.

(c) This section shall not operate to limit in scope any cause of action, other than that provided by this subchapter, available to a person injured by an assault weapon.

(d) Any defense that is available in a strict liability action shall be available as a defense under this subchapter.

(e) Recovery shall not be allowed under this subchapter for a self-inflicted injury that results from a reckless, wanton, or willful discharge of an assault weapon. (Mar. 6, 1991, D.C. Law 8-263, § 5, 37 DCR 8482.)

Legislative history of Law 8-263. — See note to § 6-2391.

Application of Law 8-263. — See note to § 6-2391.

CHAPTER 24. DEATH.

Subchapter I. Determination of Death.

Sec.

6-2401. Standard.

Subchapter II. Natural Death.

6-2421. Definitions.

6-2422. Declaration — Execution; form.

6-2423. Same — Restrictions.

6-2424. Same — Revocation.

Sec.

6-2425. Physician's duty to confirm terminal condition.

6-2426. Competency and intent of declarant.

6-2427. Extent of medical liability; transfer of patient; criminal offenses.

6-2428. Exclusion of suicide; effect of declaration upon issuance.

6-2429. Preservation of existing rights.

6-2430. Effect of subchapter.

Subchapter I. Determination of Death.

§ 6-2401. Standard.

An individual who has sustained either: (1) Irreversible cessation of circulatory and respiratory functions; or (2) irreversible cessation of all functions of the entire brain, including the brain stem; is dead. A determination of death must be made in accordance with accepted medical standards. (Feb. 25, 1982, D.C. Law 4-68, § 2, 28 DCR 5045.)

Legislative history of Law 4-68. — Law 4-68, the "Uniform Determination of Death Act of 1981," was introduced in Council and assigned Bill No. 4-206, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on Sep-

tember 29, 1981, and October 13, 1981, respectively. Signed by the Mayor on November 9, 1981, it was assigned Act No. 4-114 and transmitted to both Houses of Congress for its review.

Subchapter II. Natural Death.

§ 6-2421. Definitions.

For the purposes of this subchapter, the term:

(1) "Attending physician" means the physician selected by, or assigned to, the patient who has primary responsibility for the treatment and care of the patient.

(2) "Declaration" means a witnessed document in writing, voluntarily executed by the declarant in accordance with the requirements of § 6-2422.

(3) "Life-sustaining procedure" means any medical procedure or intervention, which, when applied to a qualified patient, would serve only to artificially prolong the dying process and where, in the judgment of the attending physician and a second physician, death will occur whether or not such procedure or intervention is utilized. The term "life-sustaining procedure" shall not include the administration of medication or the performance of any medical procedure deemed necessary to provide comfort care or to alleviate pain.

(4) "Physician" means a person authorized to practice medicine in the District of Columbia.

(5) "Qualified patient" means a patient who has executed a declaration in accordance with this subchapter and who has been diagnosed and certified in

writing to be afflicted with a terminal condition by 2 physicians who have personally examined the patient, one of whom shall be the attending physician.

(6) "Terminal condition" means an incurable condition caused by injury, disease, or illness, which, regardless of the application of life-sustaining procedures, would, within reasonable medical judgment, produce death, and where the application of life-sustaining procedures serve only to postpone the moment of death of the patient. (Feb. 25, 1982, D.C. Law 4-69, § 2, 28 DCR 5047.)

Section references. — This section is referred to in § 6-2425.

Legislative history of Law 4-69. — Law 4-69, the "Natural Death Act of 1981," was introduced in Council and assigned Bill No. 4-204, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on September 29, 1981, and October 13, 1981, respectively. Signed by

the Mayor on November 9, 1981, it was assigned Act No. 4-115 and transmitted to both Houses of Congress for its review.

Subchapter not applicable to Walter Reed Army Medical Hospital. — As a federal medical institution, Walter Reed Army Medical Hospital is not subject to the provisions of this subchapter. *Tune v. Walter Reed Army Medical Hosp.*, 602 F. Supp. 1452 (D.D.C. 1985).

§ 6-2422. Declaration — Execution; form.

(a) Any persons 18 years of age or older may execute a declaration directing the withholding or withdrawal of life-sustaining procedures from themselves should they be in a terminal condition. The declaration made pursuant to this subchapter shall be:

- (1) In writing;
 - (2) Signed by the person making the declaration or by another person in the declarant's presence at the declarant's express direction;
 - (3) Dated; and
 - (4) Signed in the presence of 2 or more witnesses at least 18 years of age.
- In addition, a witness shall not be:

- (A) The person who signed the declaration on behalf of and at the direction of the declarant;
- (B) Related to the declarant by blood or marriage;
- (C) Entitled to any portion of the estate of the declarant according to the laws of intestate succession of the District of Columbia or under any will of the declarant or codicil thereto;
- (D) Directly financially responsible for declarant's medical care; or
- (E) The attending physician, an employee of the attending physician, or an employee of the health facility in which the declarant is a patient.

(b) It shall be the responsibility of the declarant to provide for notification to his or her attending physician of the existence of the declaration. An attending physician, when presented with the declaration, shall make the declaration or a copy of the declaration a part of the declarant's medical records.

(c) The declaration shall be substantially in the following form, but in addition may include other specific directions not inconsistent with other provisions of this subchapter. Should any of the other specific directions be held to be invalid, such invalidity shall not affect other directions of the declaration

which can be given effect without the invalid direction, and to this end the directions in the declaration are severable.

Declaration

Declaration made this day of (month, year).

I,, being of sound mind, willfully and voluntarily make known my desires that my dying shall not be artificially prolonged under the circumstances set forth below, do declare:

If at any time I should have an incurable injury, disease, or illness certified to be a terminal condition by 2 physicians who have personally examined me, one of whom shall be my attending physician, and the physicians have determined that my death will occur whether or not life-sustaining procedures are utilized and where the application of life-sustaining procedures would serve only to artificially prolong the dying process, I direct that such procedures be withheld or withdrawn, and that I be permitted to die naturally with only the administration of medication or the performance of any medical procedure deemed necessary to provide me with comfort care or to alleviate pain.

In the absence of my ability to give directions regarding the use of such life-sustaining procedures, it is my intention that this declaration shall be honored by my family and physician(s) as the final expression of my legal right to refuse medical or surgical treatment and accept the consequences from such refusal.

I understand the full import of this declaration and I am emotionally and mentally competent to make this declaration.

Signed

Address

I believe the declarant to be of sound mind. I did not sign the declarant's signature above for or at the direction of the declarant. I am at least 18 years of age and am not related to the declarant by blood or marriage, entitled to any portion of the estate of the declarant according to the laws of intestate succession of the District of Columbia or under any will of the declarant or codicil thereto, or directly financially responsible for declarant's medical care. I am not the declarant's attending physician, an employee of the attending physician, or an employee of the health facility in which the declarant is a patient.

Witness

Witness

(Feb. 25, 1982, D.C. Law 4-69, § 3, 28 DCR 5047.)

Section references. — This section is referred to in §§ 6-2421, 6-2423, 6-2426, and 6-2428.

Legislative history of Law 4-69. — See note to § 6-2421.

§ 6-2423. Same — Restrictions.

A declaration shall have no effect if the declarant is a patient in an intermediate care or skilled care facility as defined in the Health Care

Facilities Regulation, enacted June 14, 1974 (Reg. 74-15; 20 DCR 1423) at the time the declaration is executed unless 1 of the 2 witnesses to the directive is a patient advocate or ombudsman. The patient advocate or ombudsman shall have the same qualifications as a witness under § 6-2422. (Feb. 25, 1982, D.C. Law 4-69, § 4, 28 DCR 5047.)

Legislative history of Law 4-69. — See note to § 6-2421.

§ 6-2424. Same — Revocation.

(a) A declaration may be revoked at any time only by the declarant or at the express direction of the declarant, without regard to the declarant's mental state by any of the following methods:

(1) By being obliterated, burnt, torn, or otherwise destroyed or defaced by the declarant or by some person in the declarant's presence and at his or her direction;

(2) By a written revocation of the declaration signed and dated by the declarant or person acting at the direction of the declarant. Such revocation shall become effective only upon communication of the revocation to the attending physician by the declarant or by a person acting on behalf of the declarant. The attending physician shall record in the patient's medical record the time and date when he or she receives notification of the written revocation; or

(3) By a verbal expressssion of the intent to revoke the declaration, in the presence of a witness 18 years or older who signs and dates a writing confirming that such expression of intent was made. Any verbal revocation shall become effective only upon communication of the revocation to the attending physician by the declarant or by a person acting on behalf of the declarant. The attending physician shall record, in the patient's medical record, the time, date, and place of when he or she receives notification of the revocation.

(b) There shall be no criminal or civil liability on the part of any person for failure to act upon a revocation made pursuant to this section unless that person has actual knowledge of the revocation. (Feb. 25, 1982, D.C. Law 4-69, § 5, 28 DCR 5047.)

Legislative history of Law 4-69. — See note to § 6-2421.

§ 6-2425. Physician's duty to confirm terminal condition.

(a) An attending physician who has been notified of the existence of a declaration executed under this subchapter, without delay after the diagnosis of a terminal condition of the declarant, shall take the necessary steps to provide for written certification and confirmation of the declarant's terminal condition, so that the declarant may be deemed to be a qualified patient under this subchapter.

(b) Once written certification and confirmation of the declarant's terminal condition is made a person becomes a qualified patient under this subchapter only if the attending physician verbally or in writing informs the patient of his or her terminal condition and documents such communication in the patient's medical record. If the patient is diagnosed as unable to comprehend verbal or written communications, such patient shall become a qualified patient as defined in § 6-2421, immediately upon written certification and confirmation of his or her terminal condition by the attending physician.

(c) An attending physician who does not comply with this section shall be considered to have committed an act of unprofessional conduct under § 2-1326. (Feb. 25, 1982, D.C. Law 4-69, § 6, 28 DCR 5047.)

Legislative history of Law 4-69. — See note to § 6-2421. referred to in subsection (c), was repealed by § 1104(e) of D.C. Law 6-99, effective March 25, 1986.

References in text. — Section 2-1326, re

§ 6-2426. Competency and intent of declarant.

(a) The desires of a qualified patient shall at all times supersede the effect of the declaration.

(b) If the qualified patient is incompetent at the time of the decision to withhold or withdraw life-sustaining procedures, a declaration executed in accordance with § 6-2422 is presumed to be valid. For the purpose of this subchapter, a physician or health facility may presume in the absence of actual notice to the contrary that an individual who executed a declaration was of sound mind when it was executed. The fact of an individual's having executed a declaration shall not be considered as an indication of a declarant's mental incompetency. (Feb. 25, 1982, D.C. Law 4-69, § 7, 28 DCR 5047.)

Legislative history of Law 4-69. — See note to § 6-2421.

§ 6-2427. Extent of medical liability; transfer of patient; criminal offenses.

(a) No physician, licensed health care professional, health facility, or employee thereof who in good faith and pursuant to reasonable medical standards causes or participates in the withholding or withdrawing of life-sustaining procedures from a qualified patient pursuant to a declaration made in accordance with this subchapter shall, as a result thereof, be subject to criminal or civil liability, or be found to have committed an act of unprofessional conduct.

(b) An attending physician who cannot comply with the declaration of a qualified patient pursuant to this subchapter shall, in conjunction with the next of kin of the patient or other responsible individual, effect the transfer of the qualified patient to another physician who will honor the declaration of the qualified patient. Transfer under these circumstances shall not constitute abandonment. Failure of an attending physician to effect the transfer of the qualified patient according to this section, in the event he or she cannot comply

with the directive, shall constitute unprofessional conduct as defined in § 2-1326.

(c) Any person who willfully conceals, cancels, defaces, obliterates, or damages the declaration of another without the declarant's consent or who falsifies or forges a revocation of the declaration of another shall commit an offense, and upon conviction shall be fined an amount not to exceed \$5,000 or be imprisoned for a period not to exceed 3 years, or both.

(d) Any person who falsifies or forges the declaration of another, or willfully conceals or withholds personal knowledge of the revocation of a declaration, with the intent to cause a withholding or withdrawal of life-sustaining procedures, contrary to the wishes of the declarant, and thereby, because of such act, directly causes life-sustaining procedures to be withheld or withdrawn and death to be hastened, shall be subject to prosecution for unlawful homicide pursuant to § 22-2401. (Feb. 25, 1982, D.C. Law 4-69, § 8, 28 DCR 5047.)

Legislative history of Law 4-69. — See § 1104(e) of D.C. Law 6-99, effective March 25, 1986.

References in text. — Section 2-1326, re

§ 6-2428. Exclusion of suicide; effect of declaration upon issuance.

(a) The withholding or withdrawal of life-sustaining procedures from a qualified patient in accordance with the provisions of this subchapter shall not, for any purpose, constitute a suicide and shall not constitute the crime of assisting suicide.

(b) The making of a declaration pursuant to § 6-2422 shall not affect in any manner the sale, procurement, or issuance of any policy of life insurance, nor shall it be deemed to modify the terms of an existing policy of life insurance. No policy of life insurance shall be legally impaired or invalidated in any manner by the withholding or withdrawal of life-sustaining procedures from an insured qualified patient, notwithstanding any term of the policy to the contrary.

(c) No physician, health facility, or other health care provider, and no health care service plan, health maintenance organization, insurer issuing disability insurance, self-insured employee welfare benefit plan, nonprofit medical service corporation, or mutual nonprofit hospital service corporation shall require any person to execute a declaration as a condition for being insured for, or receiving, health care services. (Feb. 25, 1982, D.C. Law 4-69, § 9, 28 DCR 5047.)

Legislative history of Law 4-69. — See note to § 6-2421.

§ 6-2429. Preservation of existing rights.

(a) Nothing in this subchapter shall impair or supersede any legal right or legal responsibility which any person may have to effect the withholding or withdrawal of life-sustaining procedures in any lawful manner. In such respect the provisions of this subchapter are cumulative.

(b) This subchapter shall create no presumption concerning the intention of an individual who has not executed a declaration to consent to the use or withholding of life-sustaining procedures in the event of a terminal condition. (Feb. 25, 1982, D.C. Law 4-69, § 10, 28 DCR 5047.)

Legislative history of Law 4-69. — See note to § 6-2421.

§ 6-2430. Effect of subchapter.

Nothing in this subchapter shall be construed to condone, authorize, or approve mercy-killing or to permit any affirmative or deliberate act or omission to end a human life other than to permit the natural process of dying as provided in this subchapter. (Feb. 25, 1982, D.C. Law 4-69, § 11, 28 DCR 5047.)

Legislative history of Law 4-69. — See note to § 6-2421.

CHAPTER 25. ADULT PROTECTIVE SERVICES.

Sec.

- 6-2501. Definitions.
- 6-2502. Limitations on applicability.
- 6-2503. Reporting requirements.
- 6-2504. Investigations.
- 6-2505. Provision of protective services.
- 6-2506. Provisional protection order.
- 6-2507. Ex parte temporary protection order.
- 6-2508. Qualified immunity for person reporting alleged abuse.

Sec.

- 6-2509. Rules.
- 6-2510. Payment or reimbursement for cost of protective services.
- 6-2511. Waiver of privilege.
- 6-2512. Penalties; enforcement.
- 6-2513. Reporting to Council.

§ 6-2501. Definitions.

When used in this chapter, the following terms shall have the meanings ascribed by this section:

(1) "Abuse" means:

(A) The intentional or reckless infliction of serious physical pain or injury;

(B) The use or threatened use of violence to force participation in "sexual conduct," defined in § 22-2011(5);

(C) The repeated, intentional imposition of unreasonable confinement, resulting in severe mental distress;

(D) The repeated use of threats or violence, resulting in shock or an intense, expressed fear for one's life or of serious physical injury; or

(E) The intentional or deliberately indifferent deprivation of essential food, shelter, or health care in violation of a caregiver's responsibilities, when that deprivation constitutes a serious threat to one's life or physical health.

(2) "Adult in need of protective services" means an individual aged 18 or older who is:

(A) Highly vulnerable to abuse, neglect, or exploitation because of a physical or mental impairment;

(B) Being or has recently been abused, neglected, or exploited by another; and

(C) Likely to continue being abused, neglected, or exploited by others because he or she has no one willing and able to provide adequate protection.

(3) "Adult protective services worker" (APS worker) means an employee of the District or a private social services agency under contract with the District who conducts investigations or provides protective services under this chapter.

(4) "Caregiver" means a person that, by law, contract, court order, or voluntary action, is charged with or has assumed the responsibility for an adult's essential food, shelter, or health-care needs.

(5) "Court" means the Superior Court of the District of Columbia.

(6) "Department" means the District of Columbia Department of Human Services.

(7) "District" means the District of Columbia.

(8) "Exploitation" means the unlawful appropriation or use of another's "property," defined in § 22-3801, for one's own benefit or that of a 3rd person.

(9) "Neglect" means:

(A) The repeated, careless infliction of serious physical pain or injury;

(B) The repeated failure of a caregiver to take reasonable steps, within the purview of his or her responsibilities, to protect against acts of abuse described in paragraph (1)(B) of this section;

(C) The repeated, careless imposition of unreasonable confinement, resulting in severe mental distress; or

(D) The careless deprivation of essential food, shelter, or health care in violation of a caregiver's responsibilities, when that deprivation constitutes a serious threat to one's life or physical health.

(10) "Person" means an individual, facility, agency, corporation, partnership, the District government, or any other organizational entity.

(11) "Police" means the Metropolitan Police Department of the District of Columbia.

(12) "Protective services" means those services or provisions reasonably calculated to remedy or substantially reduce the likelihood of abuse, neglect, or exploitation by another, including, but not limited to: Food, heat, shelter, clothing, health care, home care, counseling, legal assistance, and social casework. (Mar. 14, 1985, D.C. Law 5-156, § 2, 32 DCR 13.)

Section references. — This section is referred to in § 6-2504.

Legislative history of Law 5-156. — Law 5-156, the "Adult Protective Services Act of 1984," was introduced in Council and assigned Bill No. 5-334, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on November 20, 1984, and December 4, 1984, respec-

tively. Signed by the Mayor on December 7, 1984, it was assigned Act No. 5-221 and transmitted to both Houses of Congress for its review.

Delayed application of Law 5-156. — Section 15(b) of D.C. Law 5-156 provided that, except as provided in § 6-2503(e), the applicability of the act shall be delayed until October 1, 1985.

§ 6-2502. Limitations on applicability.

This chapter shall apply only to cases of an individual's abuse, neglect, or exploitation by another. To the extent that an individual's abuse or neglect of himself or herself gives rise to instances of abuse, neglect, or exploitation by another, the purpose of protective services shall be to substantially reduce the likelihood of further abuse, neglect, or exploitation by others while simultaneously respecting an adult's right to determine his or her own lifestyle. (Mar. 14, 1985, D.C. Law 5-156, § 3, 32 DCR 13.)

Legislative history of Law 5-156. — See note to § 6-2501.

Delayed application of Law 5-156. — See note to § 6-2501.

§ 6-2503. Reporting requirements.

(a)(1) Except as provided in subsection (b) of this section, whenever a conservator, court-appointed mental retardation advocate, guardian, health-care administrator, licensed health professional, police officer, or social worker has as a result of his or her appointment, employment, or practice substantial cause to believe that an adult is in need of protective services because of abuse or neglect by another, he or she shall immediately report this belief in accordance with subsection (c) of this section.

(2) Any person may voluntarily report an alleged case of abuse, neglect, or exploitation when he or she has reason to believe that an adult is in need of protective services. Voluntary reporting shall also be effected in accordance with subsection (c) of this section.

(b) The duty to report established by subsection (a)(1) of this section shall not apply to a social worker or licensed health professional who has as a client or patient, or is employed by a lawyer representing, the 3rd person who is allegedly responsible for the abuse or neglect.

(c) A report made pursuant to this section may be either oral or written and shall be transmitted to the division within the Department designated by the Mayor to receive these reports. Each report shall include, if known: The name, age, physical description, and location of the adult alleged to be in need of protective services; the name and location of the person(s) allegedly responsible for the abuse, neglect, or exploitation; the nature and extent of the abuse, neglect, or exploitation; the basis of the reporter's knowledge; and any other information the reporter believes might be helpful to an investigation. A reporter may be required to identify himself or herself only when obliged to report under subsection (a)(1) of this section.

(d)(1) The Department shall maintain a record of all reports received and be capable of receiving reports 24 hours a day, 7 days a week (including holidays). Except as provided in paragraph (4) of this subsection, the Department may release reports and investigative information acquired pursuant to this chapter only:

(A) To another public or private agency designated by the Mayor to conduct investigations or provide protective services under this chapter;

(B) To the Corporation Counsel or United States Attorney if requested for an investigation, prosecution, or civil or administrative enforcement action; or

(C) If directed by court order.

(2) A recipient of a report or investigative information released pursuant to paragraph (1)(A) through (C) of this subsection shall be subject to the same restrictions on disclosure applicable to the Department under that paragraph.

(3) Any person possessing a report or investigative information acquired pursuant to this chapter shall take reasonable steps to prevent the disclosure of information that might reveal the reporter's identity to the person(s) allegedly responsible for the abuse, neglect, or exploitation.

(4) The Department may release statistics and other data acquired pursuant to this chapter for research, reporting, or educational purposes provided all identifying references to individuals are deleted.

(e) No later than August 15, 1985, the Mayor shall widely publicize the phone number and mailing address of the division within the Department designated to receive reports under this section, and shall establish a program to educate those persons required to report under subsection (a)(1) of this section about their obligations under this section. (Mar. 14, 1985, D.C. Law 5-156, § 4, 32 DCR 13.)

Cross references. — As to composition of metropolitan police force, see § 4-107.

As to mental retardation advocate, see § 6-1953.

As to testamentary guardians of the person, see § 21-102.

As to appointment of guardians of the person by court and limitation of number of wards, see § 21-103.

As to appointment of guardians of incapacitated individuals, see § 21-2041.

As to health-care and community residence facility, hospice and home care licensure, see Chapter 13 of Title 32.

Section references. — This section is referred to in §§ 6-2508 and 6-2512.

Legislative history of Law 5-156. — See note to § 6-2501.

Delayed application of Law 5-156. — See note to § 6-2501.

§ 6-2504. Investigations.

(a)(1) In accordance with this section and the rules to be issued by the Mayor pursuant to § 6-2509, the Department shall, except as provided in paragraph (2) of this subsection, either investigate each report received or refer a report for investigation to another public or private agency designated by the Mayor.

(2) The Department shall not be required to investigate a report that:

(A) Fails to allege facts that, if proved, would be sufficient to support the conclusion that the alleged victim is an “adult in need of protective services” as that term is defined in § 6-2501(2); or

(B) Is substantively repetitive of a previously reported incidence of abuse, neglect, or exploitation.

(3) If a report alleges the existence of an immediate, substantial risk of life-threatening harm to an adult in need of protective services, the Department shall immediately notify the police, who shall conduct a prompt investigation to determine the need for police intervention. In addition, within 24 hours of the Department’s receiving such a report, an APS worker shall commence an investigation to determine the need for protective services. These 2 investigations may be conducted either jointly or separately.

(4) For reports that allege an adult is in need of protective services but do not allege the existence of an immediate, substantial risk of life-threatening harm, an APS worker shall commence an investigation to determine the need for protective services within 10 days (excluding Saturdays, Sundays, and legal holidays) of the Department’s receiving the report.

(5) In accordance with procedures to be established under § 6-2509(1), the Mayor shall ensure that, when appropriate, an APS worker is accompanied by a police officer while conducting an initial or follow-up investigation.

(b) Before entering a residence or otherwise approaching an adult who is allegedly in need of protective services, an APS worker conducting an investigation under this section shall first announce his or her purpose and, if accompanied by a police officer, the presence of that officer, and then secure the consents of the adult allegedly in need of protective services and any other adult who is present and appears to have a reasonable expectation of privacy in the residence or immediate premises. If the adult allegedly in need of protective services objects to the investigation and it does not manifestly appear to the APS worker that the objection is prompted by fear or intimidation instilled by another, the investigation shall be terminated. If the objection

manifestly appears prompted by fear or intimidation instilled by another, or if another person on the premises refuses to allow the investigation to take place, the Department may, either on its own behalf or, if the APS worker is employed by an agency other than the Department, on behalf of the other investigating agency, request the Corporation Counsel to petition for an ex parte order pursuant to subsection (c) of this section.

(c) If requested by the Department, the Corporation Counsel shall promptly conduct a factual inquiry and, if legally supportable, file a petition in court for an ex parte order enjoining persons other than the adult who is allegedly in need of protective services from directly or indirectly interfering with the investigation. The petition shall allege specific facts, supported by oath or affirmation, showing that:

(1) There is probable cause to believe an adult located at a specified location is in need of protective services; and

(2) An APS worker conducting an investigation was denied reasonable access to the adult by a 3rd person, or, if the adult objected to the investigation, there is probable cause to believe the objection was prompted by fear or intimidation instilled by another.

(d) If the court finds that a proper showing has been made under subsection (c)(1) and (2) of this section, it shall enjoin the appropriate 3rd person(s) from interfering with an investigation under this section. The court may also order any other relief deemed necessary to facilitate an investigation, but in so doing it shall fully respect the right of an adult who is allegedly in need of protective services to freely object to and terminate that investigation.

(e) The scope of an investigation under this section shall be only that which is minimally necessary for an APS worker to determine whether an adult is in need of protective services, and, if so, what protective services are needed to remedy or substantially reduce the likelihood of abuse, neglect, or exploitation by others. (Mar. 14, 1985, D.C. Law 5-156, § 5, 32 DCR 13.)

Section references. — This section is referred to in §§ 6-2505 and 6-2509.

Legislative history of Law 5-156. — See note to § 6-2501.

Delayed application of Law 5-156. — See note to § 6-2501.

§ 6-2505. Provision of protective services.

(a)(1) The Department shall ensure that protective services are promptly provided if:

(A) After an APS worker conducts an investigation under § 6-2504, the Department determines that an adult is in need of protective services;

(B) The adult in need of protective services, or a person authorized by law or court order to consent to the provision of protective services on behalf of the adult, affirmatively consents to the particular services offered;

(C) Reasonable access is not denied by a 3rd person; and

(D) The adult in need of protective services, if not indigent and exigent circumstances do not dictate otherwise, agrees to reimburse the District or make a reasonable contribution pursuant to the rules to be issued under § 6-2509(3).

(2) The Department's legal obligation to ensure the provision of protective services shall, except as provided in § 6-2512(c)(1), not exceed 90 days of services for each adult found to be in need of protective services. This 90-day limitation shall begin with the 1st day of services, apply to only those days on which services are actually provided, and include any days on which services are provided under a protection order issued pursuant to § 6-2506 or 6-2507. The Department's decision to limit services in a particular case to fewer than 90 days, its determination as to the type or level of services provided, and allegations of noncompliance with this chapter are judicially reviewable only in accordance with § 6-2512(c)(1).

(b) If an adult in need of protective services objects to the provision of particular services and it does not manifestly appear to the APS worker that the objection is prompted by fear or intimidation instilled by another, the adult shall be entitled to refuse those services and this right of refusal shall be fully respected.

(c) In any case that does not meet the requirements of subsection (a)(1)(A) through (D) of this section, the Department or other agency designated by the Mayor may provide protective services only after the Corporation Counsel obtains a protection order pursuant to § 6-2506 or 6-2507.

(d) In accordance with procedures to be established under § 6-2509(1), the Mayor shall ensure that, when appropriate, an APS worker is accompanied by a police officer while providing protective services.

(e) When determining the appropriateness of particular services, the Department or other designated agency shall first consider those protective services that encourage maximum self-determination and are least restrictive of personal liberty. (Mar. 14, 1985, D.C. Law 5-156, § 6, 32 DCR 13.)

Section references. — This section is referred to in §§ 6-2506, 6-2509, and 6-2512.

Delayed application of Law 5-156. — See note to § 6-2501.

Legislative history of Law 5-156. — See note to § 6-2501.

§ 6-2506. Provisional protection order.

(a) If requested by the Department, either on its own behalf or on behalf of another public or private agency designated by the Mayor, the Corporation Counsel shall promptly conduct a factual inquiry and, if legally supportable, file a petition in court for a provisional protection order. That petition shall state, insofar as the facts can be ascertained with reasonable diligence:

(1) The name, age, physical description, and location of the adult determined by the Department to be in need of protective services;

(2) Whether the adult and any other person(s) expected to be a party to the proceeding are indigent and therefore entitled to the appointment of counsel under subsection (b) of this section;

(3) Facts to substantiate that the adult is in need of protective services;

(4) The particular protective services or other relief sought to remedy or substantially reduce the likelihood of abuse, neglect, or exploitation by another; and

(5) Depending on the circumstances, facts to substantiate that:

(A) Failure of the adult in need of protective services to either object or affirmatively consent to those services does not constitute a knowing and voluntary decision to refuse services, but rather is the result of the adult's inability to consent due to extreme physical or mental impairment;

(B) The adult in need of protective services has objected to the provision of those services out of fear or intimidation instilled by another; or

(C) Reasonable access to the adult in need of protective services has been denied by a 3rd person.

(b) Unless continued by the court, a nonjury hearing shall be held on a petition for a provisional protection order within 15 days (excluding Saturdays, Sundays, and legal holidays) after it is filed with the court. The Corporation Counsel shall ensure that, at least 10 days (excluding Saturdays, Sundays, and legal holidays) before the hearing, notice of the hearing date and a copy of the petition are served on the adult in need of protective services and, if applicable and ascertainable with reasonable diligence, the person(s) allegedly responsible for the abuse, neglect, or exploitation, for using fear or intimidation to coerce the adult's objection to the provision of services, or for denying an APS worker reasonable access to the adult. Notice shall be effected by personal service, substitute service on a person of suitable age and discretion at the usual place of abode or employment of the person to be notified, or registered or certified mail. Pursuant to rules to be established by the court, subpoenas shall issue directing the appearance of persons whose presence at the hearing is essential to the relief sought in the petition. The adult in need of protective services and any other person on whom notice is served under this subsection shall have the right to retain counsel, and if indigent, to have counsel promptly appointed by the court upon the Corporation Counsel's filing of a petition under subsection (a) of this section. Every effort shall be made to secure the presence of the adult in need of protective services at the hearing; failure of the adult to appear shall be explained by his or her counsel to the satisfaction of the court. All parties to the proceeding may present evidence and cross-examine witnesses. Testimony of the person(s) allegedly responsible for the abuse, neglect, or exploitation, and the fruits of that testimony, shall be inadmissible as evidence in a subsequent criminal trial except in a prosecution for perjury or false statement.

(c) The court shall maintain a register of lawyers who have expressed an interest in representing indigent persons entitled to the appointment of counsel under subsection (b) of this section, and shall attempt insofar as possible to make appointments from this register. Publicly funded or pro bono legal services shall be considered and given priority by the court. If such services are unavailable, compensation for appointed counsel shall be at the hourly rate established pursuant to § 11-2604(a), and, unless expressly waived by the court, shall be subject to a maximum amount of \$750 per proceeding. Counsel shall also be reimbursed for expenses reasonably incurred. Compensation for investigative, expert, and other services shall be in accordance with § 11-2605. This subsection shall be implemented pursuant to procedures established by the court.

(d) If the court finds that the Corporation Counsel has proven the averments in the petition by a preponderance of the evidence, it may:

(1) Direct any person to refrain from abusing, neglecting, exploiting, directly or indirectly interfering with the provision of services to, residing with, or otherwise contacting the adult in need of protective services;

(2) Direct a caregiver to fulfill his, her, or its legal or contractual responsibilities, or to refrain from inadequately carrying out voluntarily assumed responsibilities;

(3) Direct the Mayor to petition for the appointment of a conservator or guardian;

(4) Direct the Mayor to provide specified or unspecified protective services, including at night and on weekends if necessary: Provided, that the court shall not direct the Mayor to provide a type of service not otherwise made available by the District government;

(5) Direct the Mayor, a caregiver, or, when appropriate, another party to the proceeding to remove the adult in need of protective services to a hospital, nursing home, community residence facility, hospice, or other appropriate facility (except a facility or part of a facility that has as its principal purpose the diagnosis and treatment of mental illnesses and disorders), so long as the placement is the least restrictive setting available in which the adult's needs can be adequately met;

(6) Direct any person to pay or reimburse the District, in accordance with § 6-2510, for relief granted under paragraph (4) or (5) of this subsection; or

(7) Direct any combination of the above.

(e) When granting relief under subsection (d)(3) through (5) of this section, the court shall first consider those remedies that encourage maximum self-determination and are least restrictive of personal liberty. In so doing, the court shall adopt a strong, rebuttable presumption in favor of home care over institutionalization. Secondly, the court shall inquire about and take into consideration potential expense to the District.

(f) The court may modify or rescind a provisional protection order upon the motion of any party to the original proceeding and for good cause shown. Except as provided in subsection (g) of this section, a provisional protection order granting the relief in subsection (d)(4) or (5) of this section shall remain effective as to that relief for such period up to 45 calendar days as the court may specify, except that on the motion of any party to the original proceeding and for good cause shown, the court may grant a single extension for a period not to exceed an additional 45 calendar days. This 90-day time limitation may not be circumvented by the attempted issuance of a new order or reissuance of the original order before or after the extension period has expired. Relief granted under subsection (d)(1) through (3) and (6) of this section shall remain effective for such period as the court may specify.

(g) When determining the duration of a provisional protection order that directs the Mayor to provide protective services, the court shall take into account the number of days, if any, that the District has already provided services pursuant to § 6-2505(a) or 6-2507, and in no event shall the issuance of a protection order result in the District's being required to provide more than 90 days of services in any particular case. (Mar. 14, 1985, D.C. Law 5-156, § 7, 32 DCR 13.)

Section references. — This section is referred to in §§ 6-2505 and 6-2507.

Legislative history of Law 5-156. — See note to § 6-2501.

Delayed application of Law 5-156. — See note to § 6-2501.

§ 6-2507. Ex parte temporary protection order.

(a) If a petition filed in accordance with § 6-2506(a) is supported by affidavit and alleges the existence of an immediate, substantial risk of life-threatening harm to an adult who the Department has determined is in need of protective services, the court may, upon a finding of probable cause and in accordance with § 6-2506(e), grant any relief listed in § 6-2506(d) immediately and without a hearing by issuing an ex parte temporary protection order. The Corporation Counsel shall ensure that, within 48 hours after the issuance of such an order, notice of the hearing date and copies of the petition, supporting affidavit(s), and order are served on the same parties and in the same manner described in § 6-2506(b).

(b) An ex parte temporary protection order shall remain effective for such period as the court may specify until a hearing is held and the petition for a provisional protection order granted or denied pursuant to § 6-2506. The court may modify or rescind an ex parte temporary protection order upon the motion of any person and for good cause shown. (Mar. 14, 1985, D.C. Law 5-156, § 8, 32 DCR 13.)

Section references. — This section is referred to in §§ 6-2505 and 6-2506.

Legislative history of Law 5-156. — See note to § 6-2501.

Delayed application of Law 5-156. — See note to § 6-2501.

§ 6-2508. Qualified immunity for person reporting alleged abuse.

Any person who reports an alleged case of abuse, neglect, or exploitation pursuant to § 6-2503 shall be immune from civil or criminal liability for so reporting if he, she, or it has acted in good faith. (Mar. 14, 1985, D.C. Law 5-156, § 9, 32 DCR 13.)

Cross references. — As to immunity of hospitals, etc., from liability, see § 2-1354.

Legislative history of Law 5-156. — See note to § 6-2501.

Delayed application of Law 5-156. — See note to § 6-2501.

§ 6-2509. Rules.

The Mayor shall, no later than October 1, 1985, and pursuant to subchapter I of Chapter 15 of Title 1, issue rules deemed necessary to carry out the purposes of this chapter. These rules shall at a minimum include procedures to ensure:

(1) The effective coordination of investigative efforts by the police and the Department and the availability of police assistance should it be required, pursuant to §§ 6-2504(a) and 6-2505(d);

(2) The effective coordination of interdepartmental resources and actions when a report made to the Department alleges that an individual, facility, or agency licensed by the Department of Consumer and Regulatory Affairs is responsible for the abuse, neglect, or exploitation of an impaired adult; and

(3) That, unless exigent circumstances dictate otherwise, nonindigent adults in need of protective services and persons legally responsible for providing any or all of the services provided or contracted for by the District reimburse the District for, or make a reasonable contribution toward, the cost of providing those services. (Mar. 14, 1985, D.C. Law 5-156, § 10, 32 DCR 13.)

Section references. — This section is referred to in §§ 6-2504, 6-2505, and 6-2510.

Legislative history of Law 5-156. — See note to § 6-2501.

Delayed application of Law 5-156. — See note to § 6-2501.

§ 6-2510. Payment or reimbursement for cost of protective services.

(a) In implementing § 6-2509(3), the Mayor may establish a sliding scale based on one's ability to pay. No adult in need of protective services shall be denied those services because he or she is unable to pay for them or because a person (other than the adult) who is legally responsible for providing any or all of the services refuses to reimburse the District or contribute to their cost. The Corporation Counsel may, either as part of a proceeding for a protection order or in an independent court action, seek an order directing the adult in need of protective services or person(s) legally responsible for those services to pay or reimburse the District for so much of the cost of providing protective services under this chapter as he or she is reasonably able to afford. The court, however, may not direct an adult in need of protective services to pay or reimburse the District for any of the cost of providing those services if the court orders the services over the continued objection of the adult after finding that the objection has been prompted by fear or intimidation instilled by another.

(b) The Corporation Counsel may, either as part of a proceeding for a protection order or in an independent court action, seek an order directing the person(s) responsible for an adult's abuse, neglect, or exploitation to pay or reimburse the District for all or part of the costs associated with conducting the investigation, appointing counsel, and providing protective services in that particular case. In so doing, the Corporation Counsel shall have the burden of proving a person's responsibility for abuse, neglect, or exploitation by a preponderance of the evidence. Testimony of the defendant(s), and the fruits of that testimony, shall be inadmissible as evidence in a subsequent criminal trial except in a prosecution for perjury or false statement. (Mar. 14, 1985, D.C. Law 5-156, § 11, 32 DCR 13.)

Section references. — This section is referred to in § 6-2506.

Legislative history of Law 5-156. — See note to § 6-2501.

Delayed application of Law 5-156. — See note to § 6-2501.

§ 6-2511. Waiver of privilege.

Any professional covered by the privilege established in § 14-307, who has or had as his or her client or patient the adult alleged or determined to be in need of protective services may be required, without the consent of that adult or his or her legal representative, to testify or otherwise disclose confidential information in any court proceeding held pursuant to this chapter if the judge determines that the privilege should be waived in the interest of justice. (Mar. 14, 1985, D.C. Law 5-156, § 12, 32 DCR 13.)

Cross references. — As to disclosure of confidential information by physicians and mental health professionals, see § 14-307.

Delayed application of Law 5-156. — See note to § 6-2501.

Legislative history of Law 5-156. — See note to § 6-2501.

§ 6-2512. Penalties; enforcement.

(a)(1) Any person required to report under § 6-2503(a)(1) who willfully fails to do so shall be guilty of a misdemeanor and, upon conviction, subject to a fine not exceeding \$300.

(2) Any person who willfully makes a report under § 6-2503 containing information that he or she knows to be false shall be guilty of a misdemeanor and, upon conviction, subject to a fine not exceeding \$1,000.

(3) Any person who willfully discloses, receives, uses, or permits the use of a report, investigative information, or other data in violation of § 6-2503(d) shall be guilty of a misdemeanor and, upon conviction, subject to a fine not exceeding \$1,000.

(4) Any person who, because of a report made under § 6-2503 or testimony given in support of the allegations contained in such a report, retaliates against any other person by taking action that adversely affects the latter's rights, privileges, living arrangement, or terms of employment shall be civilly liable for any damages caused by that retaliation and, in addition, subject to punitive damages not exceeding \$5,000.

(5) Any health-care administrator or health professional licensed in the District who willfully fails to make a report required by § 6-2503(a)(1), or willfully makes a report under § 6-2503 containing information that he or she knows to be false, shall be guilty of unprofessional conduct and subject to any sanction available to the governmental board, commission, or other authority responsible for his or her licensure.

(b) Criminal prosecutions brought under subsection (a) of this section shall be in the Superior Court of the District of Columbia by information signed by the Corporation Counsel.

(c)(1) Any person who is aggrieved by a violation of this chapter, or who is acting on or in behalf of a person aggrieved by a violation of this chapter, may maintain an action in court to enjoin the continuation of that violation or the commission of any future violation. In any such action that challenges the adequacy of protective services provided under § 6-2505(a), the court may direct the Mayor to provide additional or different services only upon a finding

of bad-faith noncompliance. Should such a finding be made, days on which, in the opinion of the court, the services provided were grossly inadequate shall not be counted against the 90-day limitation in § 6-2505(a)(2). Actions brought under this paragraph shall, commensurate with the exigency of the circumstances alleged, be expedited pursuant to procedures to be established by the court.

(2) No right to monetary relief shall lie against the District for a violation of this chapter. Denial of such a right, however, shall in no way be construed to limit or impede any other action for monetary relief that might be available pursuant to other federal or District law. (Mar. 14, 1985, D.C. Law 5-156, § 13, 32 DCR 13.)

Cross references. — As to false statements, see § 22-2514.

As to conduct of criminal prosecutions, see § 23-101.

As to health-care and community residence facility, hospice and home care licensure, see Chapter 13 of Title 32.

Section references. — This section is referred to in § 6-2505.

Legislative history of Law 5-156. — See note to § 6-2501.

Delayed application of Law 5-156. — See note to § 6-2501.

§ 6-2513. Reporting to Council.

No later than October 1, 1987, the Mayor shall prepare and submit to the Council a report on this chapter, which shall at a minimum include the following:

(1) A description of the specific actions taken to implement this chapter, including the staffing pattern and budget of the responsible administrative unit;

(2) An analysis by fiscal year of:

(A) The number of cases reported, investigations conducted, and reports substantiated;

(B) The characteristics of both substantiated and unsubstantiated cases, including a breakdown by age, impairment, individual reporting, police involvement, services refused, and type of abuse, neglect, or exploitation involved;

(C) The number of cases referred to court, the reasons for referral, their outcome, and associated court costs;

(D) The type, amount, and cost of protective services provided;

(E) The percentage of cost reimbursed by or recouped from 3rd parties; and

(F) The status of substantiated cases at the end of 90 days of services, and the average number of days of services per case; and

(3) Any recommendations for amendments to this chapter. (Mar. 14, 1985, D.C. Law 5-156, § 14, 32 DCR 13.)

Legislative history of Law 5-156. — See note to § 6-2501.

Delayed application of Law 5-156. — See note to § 6-2501.

CHAPTER 26. PROHIBITION OF BUYING AND SELLING
OF HUMAN BODY PARTS.

Sec.

6-2601. "Human body parts" defined; prohibited acts.

Sec.

6-2602. Penalties; prosecutions.
6-2603. Rules.

§ 6-2601. "Human body parts" defined; prohibited acts.

(a) For the purposes of this chapter, the term "human body parts" means any portion of a human body, including, but not limited to, organs, tissues, eyes, bones, veins, and arteries, except that the term shall not mean hair and blood.

(b) It is unlawful for any person in the District of Columbia to buy, to offer to buy, to sell, to offer to sell, or to procure through purchase any human body part for any reason, including, but not limited to, medical and specific uses, such as transplantation, implantation, infusion, or injection. (Mar. 16, 1985, D.C. Law 5-189, § 2, 32 DCR 931.)

Legislative history of Law 5-189. — Law 5-189, the "Prohibition of the Buying and Selling of Human Body Parts Act of 1984," was introduced in Council and assigned Bill No. 5-398, which was referred to the Committee on the Judiciary. The Bill was adopted on first and

second readings on December 4, 1984, and December 18, 1984, respectively. Signed by the Mayor on January 11, 1985, it was assigned Act No. 5-254 and transmitted to both Houses of Congress for its review.

§ 6-2602. Penalties; prosecutions.

(a) Any person violating any provision of this chapter or any regulation made pursuant to this chapter shall be fined not more than \$5,000, or be imprisoned for not more than 6 months, or both.

(b) Prosecution for violations of this chapter and regulations made pursuant to this chapter shall be brought in the name of the District of Columbia upon information by the Corporation Counsel. (Mar. 16, 1985, D.C. Law 5-189, § 3, 32 DCR 931.)

Legislative history of Law 5-189. — See note to § 6-2601.

§ 6-2603. Rules.

The Mayor may issue rules to implement the provisions of this chapter pursuant to subchapter I of Chapter 15 of Title 1. (Mar. 16, 1985, D.C. Law 5-189, § 4, 32 DCR 931.)

Legislative history of Law 5-189. — See note to § 6-2601.

Delegation of authority pursuant to Law

5-189. — See Mayor's Order 86-62, April 22, 1986.

CHAPTER 27. CIVIL INFRACTIONS.

*Subchapter I. Purposes; Definitions;
Administrative Law Judges and
Attorney Examiners; Sanctions;
Regulations*

Sec.

6-2701. Purpose.

6-2702. Definitions.

6-2703. Administrative law judges and attorney examiners.

6-2704. Monetary sanctions.

6-2705. Regulations.

6-2706. Summary action.

Subchapter II. Procedures.

6-2711. Notice of infraction.

6-2712. Answer.

Sec.

6-2713. Hearing.

6-2714. Final decision.

6-2715. Service.

Subchapter III. Administrative Review.

6-2721. Jurisdiction to hear appeal.

6-2722. Right to administrative appeal and costs of appeal.

6-2723. Scope of review.

*Subchapter I. Purposes; Definitions; Administrative Law
Judges and Attorney Examiners;
Sanctions; Regulations.*

§ 6-2701. Purpose.

It is the purpose of the Council of the District of Columbia in the adoption of this act to provide for the imposition of alternative civil sanctions for infractions of laws and regulations amended by title IV, and to provide for a uniform and expeditious system of administrative adjudication with respect to the infractions. (Oct. 5, 1985, D.C. Law 6-42, § 101, 32 DCR 4450.)

Legislative history of Law 6-42. — Law 6-42, the “Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985,” was introduced in Council and assigned Bill No. 6-187, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 25, 1985, and July 9, 1985, respectively. Signed by the Mayor on July 16, 1985, it was assigned Act No. 6-60 and transmitted to both Houses of Congress for its review.

References in text. — “This act,” referred to near the beginning of the section, is D.C. Law

6-42. “Title IV,” referred to near the middle of the section, is Title IV of D.C. Law 6-42.

Delegation of authority pursuant to Law 6-42. — See Mayor’s Order 86-38, March 4, 1986.

D.C. Board of Appeals and Review established. — See Mayor’s Order 86-50, March 31, 1986.

Cited in F.W. Woolworth Co. v. District of Columbia Bd. of Appeals & Review, App. D.C., 579 A.2d 713 (1990).

§ 6-2702. Definitions.

For the purposes of this act, the term:

(1) “District” means the District of Columbia.

(2) “Infraction” means any act or failure to act for which a civil sanction may be imposed under the provisions of this act, and with respect to which either the Corporation Counsel or the United States Attorney for the District of Columbia is authorized to commence a criminal proceeding in the Superior Court of the District of Columbia, or for which another civil sanction may be imposed under any District laws or regulations.

(3) "Mayor" means the Mayor of the District of Columbia.

(4) "Person" means corporations, firms, agencies, companies, associations, organizations, partnerships, societies, and joint stock companies, as well as individuals.

(5) "Respondent" means any person charged with an infraction as defined in paragraph (2) of this section. (Oct. 5, 1985, D.C. Law 6-42, § 102, 32 DCR 4450; Mar. 8, 1991, D.C. Law 8-237, § 2(a), 38 DCR 314.)

Legislative history of Law 6-42. — See note to § 6-2701.

Legislative history of Law 8-237. — See note to § 6-2706.

References in text. — The words "this act," which appear in the introductory language and paragraph (2), refer to D.C. Law 6-42.

§ 6-2703. Administrative law judges and attorney examiners.

(a) The Mayor shall appoint 1 or more attorneys to serve as administrative law judges or attorney examiners to implement the provisions of this act.

(b) Administrative law judges or attorney examiners shall have the following powers:

(1) Presiding over hearings in contested matters under this act;

(2) Compelling the attendance of witnesses by subpoena, administering oaths, taking the testimony of witnesses under oath, and dismissing, rehearing, and continuing cases;

(3) Imposing sanctions for infractions under subchapter II of this chapter, including monetary fines, penalties, and hearing and inspection costs;

(4) Suspending permits or licenses for the purpose of enforcing the payment of monetary fines, penalties, or hearing and inspection costs;

(5) Permitting the payment of monetary fines, penalties, and hearing and inspection costs in excess of \$50 in monthly installments over a period not greater than 6 months and allowing a fee of 1 percent per month of the outstanding amount owed by a respondent for the installment service;

(6) Suspending all or part of any fine or penalty imposed on grounds of past compliance or past good faith attempts to comply with applicable laws and regulations, or upon condition that the respondent correct the infraction by a date certain; and

(7) Sealing the premises where the conduct occurred which is the basis of the citation to enforce orders requiring the payment of monetary fines, penalties, or hearing and inspection costs.

(c) Each licensing or permitting authority or successor entity established by the laws and regulations amended by title IV may delegate to administrative law judges or attorney examiners, who are appointed pursuant to this section, the authority to conduct hearings pursuant to the laws and regulations and to recommend appropriate action, including denial, suspension, or revocation of any permit or license, to the licensing or permitting authority.

(d) Prior to assuming any duties or responsibilities pursuant to subchapters I through III of this chapter, administrative law judges or attorney examiners shall have completed an orientation or training course established by the

Mayor for the purpose of familiarizing themselves with relevant rules, procedures, and substantive law.

(e) Administrative law judges and attorney examiners appointed pursuant to this section may hear cases pursuant to Chapter 39 of Title 28. (Oct. 5, 1985, D.C. Law 6-42, § 103, 32 DCR 4450; Mar. 8, 1991, D.C. Law 8-237, § 2(b), 38 DCR 314.)

Section references. — This section is referred to in § 28-3902.

Legislative history of Law 6-42. — See note to § 6-2701.

Legislative history of Law 8-237. — See note to § 6-2706.

References in text. — “This act,” referred to in subsection (a) and subsection (b)(1), is D.C. Law 6-42. “Title IV,” referred to in subsection (c), is Title IV of D.C. Law 6-42.

§ 6-2704. Monetary sanctions.

(a)(1) The Mayor shall prepare and periodically amend a schedule of fines. The schedule of fines shall be submitted to the Council of the District of Columbia (“Council”) for its approval or disapproval, in whole or in part, by resolution. The schedule of fines and subsequent amendments shall not become effective until approved by the Council, or 60 days after submission if the Council has not disapproved the schedule or amendments.

(2) In addition to the civil fine, the following penalties may be imposed:

(A) A respondent who fails to answer a notice of infraction within the time specified by § 6-2712(e) may be assessed a penalty equal to the amount of the civil fine for the infraction set forth in the notice.

(B) A respondent who fails to answer a second notice of infraction within the time specified by § 6-2712(f) may be assessed a penalty equal to twice the amount of the civil fine for the infraction set forth in the notice.

(b) In addition to any civil fines and penalties imposed following the adjudication of an infraction adverse to a respondent, an administrative law judge or attorney examiner may, in accordance with rules issued by the Mayor, impose upon the respondent, by order, the costs to the District of any additional inspections before, during, or after the hearing, and other costs associated with the hearing. (Oct. 5, 1985, D.C. Law 6-42, § 104, 32 DCR 4450; May 10, 1989, D.C. Law 7-231, § 21, 36 DCR 492; Mar. 8, 1991, D.C. Law 8-237, § 2(c), 38 DCR 314.)

Section references. — This section is referred to in §§ 6-2712 and 6-2713.

Legislative history of Law 6-42. — See note to § 6-2701.

Legislative history of Law 7-231. — Law 7-231, the “Technical Amendments Act of 1988,” was introduced in Council and assigned Bill No. 7-586, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 29, 1988 and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-285 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-237. — See note to § 6-2706.

Formal procedures for fine imposition required. — Although the Department of Consumer and Regulatory Affairs did have authority to include a particular regulatory violation among the classes of violations subject to civil fines, where it has not yet done so using the required formal procedures it could not impose a fine for the regulatory violation on an ad hoc basis. *F.W. Woolworth Co. v. District of Columbia Bd. of Appeals & Review*, App. D.C., 579 A.2d 713 (1990).

§ 6-2705. Regulations.

The Mayor may issue rules and regulations necessary to carry out the purposes of this act. (Oct. 5, 1985, D.C. Law 6-42, § 105, 32 DCR 4450.)

Cross references. — As to purposes of Law 6-42, see § 6-2701.

Legislative history of Law 6-42. — See note to § 6-2701.

References in text. — “This act,” referred to at the end of the section, is D.C. Law 6-42.

§ 6-2706. Summary action.

(a) If the Mayor determines, after investigation, that the conduct of a licensee presents an imminent danger to the health or safety of the residents of the District, the Mayor may order the sealing of the premises upon which the respondent is engaged in the unlawful conduct, provided that the premises are primarily used for the unlawful activity.

(b) At the time of the sealing of the premises, the Mayor shall provide the licensee with written notice stating the action being taken, the basis for the action, and the right of the licensee to request a hearing.

(c) A licensee shall have the right to request a hearing within 72 hours after service of notice of the sealing of the premises. The Mayor shall hold a hearing within 72 hours of receipt of a timely request, and shall issue a decision within 72 hours after the hearing.

(d) Every decision and order adverse to a licensee shall be accompanied by findings of fact and conclusions of law. The findings shall be supported by, and in accordance with, reliable, probative, and substantial evidence. The Mayor shall provide a copy of the decision and order and accompanying findings of fact and conclusions of law to each party to a case or to each party's attorney of record.

(e) Any person aggrieved by a final summary action may seek judicial review in accordance with subchapter I of Chapter 15 of Title 1. (Oct. 5, 1985, D.C. Law 6-42, § 106, as added Mar. 8, 1991, D.C. Law 8-237, § 2(d), 38 DCR 314.)

Legislative history of Law 8-237. — Law 8-237, the “Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985 Technical and Clarifying Amendments Act of 1990,” was introduced in Council and assigned Bill No. 8-203, which was referred to the Committee on Consumer and Regulatory Affairs.

The Bill was adopted on first and second readings on December 4, 1990, and December 18, 1990, respectively. Signed by the Mayor on December 27, 1990, it was assigned Act No. 8-320 and transmitted to both Houses of Congress for its review.

Subchapter II. Procedures.

§ 6-2711. Notice of infraction.

(a) In order to initiate a proceeding under subchapters I and II of this chapter, the Mayor shall serve a notice of infraction upon a respondent. The Mayor shall retain a copy of the notice of infraction, which shall bear a certification attesting to the matters set forth in the notice.

- (b) The Mayor shall prepare the notice of infraction, which shall contain:
- (1) The name and address of the respondent;
 - (2) A citation of the law or regulation alleged to have been violated;
 - (3) The nature, time, and place of the infraction;
 - (4) Where appropriate, the date by which the respondent must comply to avoid incurring a fine or penalty;
 - (5) The amount of the fine applicable to the infraction;
 - (6) The manner, place, and time in which the fine and penalties, if any, may be paid;
 - (7) Notice that failure to pay monetary sanctions may result in suspension of respondent's permit or license;
 - (8) Notice that failure to answer the notice of infraction within 15 calendar days from the date of service, or other period which the Mayor may establish by rule or regulation, may result in penalties, and the amount of those penalties; and
 - (9) Notice of the respondent's right to request a hearing with respect to the infraction, and the procedure for requesting a hearing.

(c) If an administrative law judge or attorney examiner determines that a notice of infraction is defective on its face, the administrative law judge or attorney examiner shall enter an order dismissing the notice of infraction and shall promptly notify the respondent. (Oct. 5, 1985, D.C. Law 6-42, § 201, 32 DCR 4450; Mar. 8, 1991, D.C. Law 8-237, § 2(e), (f), 38 DCR 314.)

Legislative history of Law 6-42. — See note to § 6-2701.

Legislative history of Law 8-237. — See note to § 6-2706.

§ 6-2712. Answer.

- (a) In answer to a notice of infraction a respondent may:
- (1) Admit the infraction;
 - (2) Admit the infraction with an explanation which the hearing examiner may take into account in the imposition of a sanction for the infraction; or
 - (3) Deny commission of the infraction.
- (b) A respondent who responds to a notice of infraction but fails to indicate whether the respondent admits, admits with explanation, or denies the infraction shall be considered to have admitted the infraction if the respondent pays the appropriate fine and penalties, and shall otherwise be considered to have denied the infraction.
- (c) A respondent may answer the notice of infraction by mail or in person.
- (d) A respondent admitting an infraction shall, at the time the respondent submits an answer, pay the applicable civil fine established pursuant to § 6-2704(a)(1), and any applicable penalties pursuant to § 6-2704(a)(2).
- (e) A respondent shall answer a notice of infraction within 15 calendar days of the date the notice of infraction was served, or within any other time period the Mayor may establish by rule or regulation.
- (f) If a respondent has been served a notice of infraction and fails, without good cause, to answer within the time period established in subsection (e) of this section, the respondent shall be liable for the penalty established pursuant

to § 6-2704(a)(2)(A). The Mayor shall then serve a second notice of infraction upon the respondent. If the respondent fails to answer the second notice of infraction within 15 calendar days of service, or within any other time period the Mayor may establish by rule or regulation, the respondent shall be liable for the penalty established pursuant to § 6-2704(a)(2)(B).

(g) No notice of infraction issued pursuant to subchapters I and II of this chapter shall abridge or abrogate any time periods established by the laws and regulations amended by title IV regarding cure of an infraction. (Oct. 5, 1985, D.C. Law 6-42, § 202, 32 DCR 4450; Mar. 8, 1991, D.C. Law 8-237, § 2(h), 38 DCR 314.)

Section references. — This section is referred to in § 6-2704.

Legislative history of Law 6-42. — See note to § 6-2701.

Legislative history of Law 8-237. — See note to § 6-2706.

References in text. — “Title IV,” referred to in (g), is Title IV of D.C. Law 6-42.

§ 6-2713. Hearing.

(a) The administrative law judge or attorney examiner shall conduct a hearing on a notice of infraction in accordance with Chapter 15 of Title 1, except as otherwise provided by this act. The Mayor shall bear the burden of establishing an infraction by a preponderance of the evidence.

(b) If a respondent fails, without good cause, to appear at a hearing of which the respondent has been served a notice, the administrative law judge or attorney examiner may proceed with the hearing and enter a final order in the case.

(c) After due consideration of the evidence and arguments, the administrative law judge or attorney examiner shall determine whether the Mayor has established the infraction. Where the Mayor has not established the infraction, the administrative law judge or attorney examiner shall enter an order dismissing the notice of infraction. Where the Mayor has established the infraction, the administrative law judge or attorney examiner shall enter an appropriate written order, which shall set forth findings of fact, conclusions of law, and a sanction.

(d) An order entered pursuant to this section is civil in nature.

(e) Upon a finding that the respondent has committed the infraction, the administrative law judge or attorney examiner may order the respondent to pay a civil fine and, where appropriate, penalties pursuant to § 6-2704(a)(2) and costs pursuant to § 6-2704(b).

(f) The administrative law judge or attorney examiner may suspend any permit or license which authorizes the respondent to engage in the activity to which the infraction relates if the respondent fails to pay any fines, penalties, or costs in accordance with the administrative law judge’s or attorney examiner’s order. Suspension of the permit or license shall continue until the respondent complies with the administrative law judge’s or attorney examiner’s order.

(g) Upon request of the respondent, the administrative law judge or attorney examiner may stay the imposition of any sanction imposed pending administrative review.

(h) The Mayor may cause to be entered any final order requiring a respondent to pay fines, penalties, or costs as a judgement against the respondent in the Civil Actions Branch of the Civil Division of the Superior Court of the District of Columbia. The Mayor may enforce the judgement in the same manner as any other civil judgement may be enforced under District law.

(i) The Mayor may place liens on property for nonpayment of fines, penalties, and costs as follows:

(1) Whenever the owner of real property in the District of Columbia fails to pay all fines, penalties, or costs associated with a final adjudication under this chapter, the District shall have a continuing lien upon the property and upon any improvements on the property in the amount of the outstanding charges;

(2) These liens shall have priority over all other liens except liens for District taxes and District water charges; and

(3) If outstanding charges remain unpaid 90 days after the date to appeal a final adjudication, and no appeal has been taken, the property may be sold for costs at the next tax sale in the same manner and under the same conditions as property sold for delinquent general taxes, if the outstanding charges, together with penalties and costs, have not been paid in full prior to the sale. (Oct. 5, 1985, D.C. Law 6-42, § 203, 32 DCR 4450; Mar. 8, 1991, D.C. Law 8-237, § 2(i), 38 DCR 314.)

Legislative history of Law 6-42. — See note to § 6-2701.

Legislative history of Law 8-237. — See note to § 6-2706.

References in text. — “This act,” referred to

in the first sentence of subsection (a), is D.C. Law 6-42.

“This chapter,” referred to in (i)(1), is D.C. Law 6-42 as amended by D.C. Law 8-237.

§ 6-2714. Final decision.

(a) The order of the administrative law judge or attorney examiner shall become final 15 calendar days after service of the order upon the respondent, unless within that time the party files an administrative appeal pursuant to subchapter III of this chapter.

(b) The Mayor may prepare a listing of delinquent respondents who have not paid or appealed within 15 days of service, fines, penalties, or costs resulting from final decisions issued by attorney examiners and may periodically publish such a list in one or more general circulation newspapers published in the District of Columbia. (Oct. 5, 1985, D.C. Law 6-42, § 204, 32 DCR 4450; Mar. 8, 1991, D.C. Law 8-237, § 2(j), 38 DCR 314.)

Legislative history of Law 6-42. — See note to § 6-2701.

Legislative history of Law 8-237. — See note to § 6-2706.

§ 6-2715. Service.

Any notice or order served upon a respondent or other person pursuant to subchapters I through III of this chapter may be personally served, delivered to the respondent’s or other person’s last known home or business address and left with a person of suitable age and discretion residing or employed therein,

or mailed to the respondent or other person by first class mail to the respondent's last known home or business address. When service is by mail, 5 additional days shall be added to the time period within which the respondent or other person may, or is required to, take any action specified in the notice or order. (Oct. 5, 1985, D.C. Law 6-42, § 205, 32 DCR 4450.)

Legislative history of Law 6-42. — See note to § 6-2701.

Subchapter III. Administrative Review.

§ 6-2721. Jurisdiction to hear appeal.

The District of Columbia Board of Appeals and Review shall entertain and determine appeals timely filed by persons aggrieved by orders issued by hearing examiners pursuant to this chapter or by the Mayor, except that appeals involving infractions of Chapter 4 of Title 5, or the District of Columbia Zoning Regulations shall be entertained and determined by the District of Columbia Board of Zoning Adjustment; appeals involving infractions of Chapter 1 of Title 25, or of any regulation issued under the authority of that chapter shall be entertained and determined by the District of Columbia Alcoholic Beverage Control Board; appeals involving infractions of laws governing occupations and professions or of regulations issued under the authority of those laws shall be entertained and determined by the appropriate occupational or professional board or commission; and appeals involving infractions of Chapter 25 of Title 45, or of any regulation issued under the authority of that chapter shall be entertained and determined by the District of Columbia Rental Housing Commission. (Oct. 5, 1985, D.C. Law 6-42, § 301, 32 DCR 4450; Mar. 8, 1991, D.C. Law 8-237, § 2(k), 38 DCR 314.)

Section references. — This section is referred to in § 6-2722.

Legislative history of Law 6-42. — See note to § 6-2701.

Legislative history of Law 8-237. — See note to § 6-2706.

§ 6-2722. Right to administrative appeal and costs of appeal.

Any person aggrieved by an order of an administrative law judge or attorney examiner issued pursuant to subchapters I and II of this chapter, or the Mayor, may appeal to the reviewing agency specified in § 6-2721. The costs of any appeal, including, but not limited to, the expense of providing a transcript of the hearing, shall be borne by the appellant unless excused by the Mayor pursuant to rules issued by the Mayor. (Oct. 5, 1985, D.C. Law 6-42, § 302, 32 DCR 4450; Mar. 8, 1991, D.C. Law 8-237, § 2(l), 38 DCR 314.)

Legislative history of Law 6-42. — See note to § 6-2701.

Legislative history of Law 8-237. — See note to § 6-2706.

§ 6-2723. Scope of review.

The reviewing agency shall make a determination of each appeal on the basis of the record established before the administrative law judge or attorney examiner. The reviewing agency shall set aside any administrative law judge or attorney examiner order that is without observance of procedure required by law or regulations, including any applicable procedure required by subchapters I and II of this chapter, or any administrative law judge or attorney examiner order that is unsupported by a preponderance of the evidence on the record. The reviewing agency shall apply the rule of harmless error, and shall have power to affirm, reverse, or modify the order of the administrative law judge or attorney examiner. The reviewing agency may remand a case for further proceedings before the administrative law judge or attorney examiner. A reviewing agency may not modify a monetary sanction imposed by an administrative law judge or attorney examiner if that sanction is within the limits established by law or regulation. (Oct. 5, 1985, D.C. Law 6-42, § 303, 32 DCR 4450; Mar. 8, 1991, D.C. Law 8-237, § 2(m), 38 DCR 314.)

Legislative history of Law 6-42. — See note to § 6-2701.

Legislative history of Law 8-237. — See note to § 6-2706.

CHAPTER 28. AIDS HEALTH CARE.

Sec.

6-2801. Definitions.

6-2802. Comprehensive AIDS Health-Care Response Plan.

6-2803. Residential health-care facility.

Sec.

6-2804. AIDS Program Coordination Office.

6-2805. Confidentiality of medical records and information.

6-2806. Rules.

§ 6-2801. Definitions.

For the purpose of this chapter, the term:

(1) "AIDS" means acquired immune deficiency syndrome or any AIDS-related condition.

(2) "Council" means the Council of the District of Columbia.

(3) "Director" means the Director of the Department of Human Services, established by Reorganization Plan No. 2 of 1979, approved February 21, 1980.

(4) "Families" means persons who are related by blood, legal custody, marriage, having a child in common, or who share or have shared for at least 1 year a mutual residence and who maintain or have maintained an intimate relationship rendering the application of this chapter appropriate.

(5) "Mayor" means the Mayor of the District of Columbia. (Mar. 25, 1986, D.C. Law 6-102, § 2, 33 DCR 796; June 10, 1986, D.C. Law 6-121, § 2, 33 DCR 2451.)

Legislative history of Law 6-102. — Law 6-102, the "AIDS Health-Care Response Temporary Act of 1985," was introduced in Council and assigned Bill No. 6-358, which was retained by council. The Bill was adopted on first and second readings on December 17, 1985 and January 14, 1986, respectively. Signed by the Mayor on January 28, 1986, it was assigned Act No. 6-130 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-121. — Law 6-121, the "AIDS Health-Care Response Act of 1986," was introduced in Council and assigned Bill No. 6-306, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on March 11, 1986 and March 25, 1986, respectively. Signed by the Mayor on April 15, 1986, it was assigned Act No. 6-156 and transmitted to both Houses of Congress for its review.

§ 6-2802. Comprehensive AIDS Health-Care Response Plan.

(a) Within 6 months of December 30, 1985, the Mayor shall develop and present to the Council for its review and comment a comprehensive AIDS Health-Care Response Plan for the District of Columbia. The plan shall include, but not be limited to, the development of short-term and long-term goals and schemes for administrative coordination by District government agencies, educational programs, prevention methods and programs, a compilation of private sector services available to AIDS patients, medical research and information gathering, outpatient and inpatient health-care services delivery, social services delivery, exploration of the feasibility of establishing a separate compensation rate for District employees working in the health-care treatment facility or facilities contemplated in § 6-2803, housing, and identifying other general services needs.

(b) The Mayor shall update annually the comprehensive plan mandated by subsection (a) of this section. (Mar. 25, 1986, D.C. Law 6-102, § 3, 33 DCR 796; June 10, 1986, D.C. Law 6-121, § 3, 33 DCR 2451.)

Cross references. — As to Mayor's issuance of executive order in public health emergencies, see § 6-1504.

Section references. — This section is referred to in §§ 6-2803 and 6-2804.

Legislative history of Law 6-102. — See note to § 6-2801.

Legislative history of Law 6-121. — See note to § 6-2801.

Mayor authorized to make AIDS grants.

— Section 2 of D.C. Law 10-165 provided that the Mayor shall have the authority to make grants, with appropriated funding, for HIV/AIDS related services pursuant to the regulations contained in Chapter 80 of Title 22 of the District of Columbia Municipal Regulations governing the administration of public health grants by the Department of Human Services.

§ 6-2803. Residential health-care facility.

(a) In preparing the comprehensive plan mandated in § 6-2802, the Mayor shall investigate the need for a residential health-care facility or facilities which shall provide a program of medical, nursing, counseling, palliative, social, recreational, and supportive services to AIDS patients and their families.

(b) If, following an investigation, the Mayor identifies a need for a residential health-care facility or facilities in the District of Columbia, the Mayor shall establish the facility or facilities.

(c) In order to establish the facility or facilities, the Mayor may acquire, by purchase, rehabilitation, condemnation, rental, or otherwise, a building or buildings suitable for use as a residential health-care facility or facilities, including furniture, medical equipment, and other necessary accessories.

(d) The Mayor may enter into contractual arrangements with any agency or organization qualified to provide the services enumerated in subsection (a) of this section. (Mar. 25, 1986, D.C. Law 6-102, § 4, 33 DCR 796; June 10, 1986, D.C. Law 6-121, § 4, 33 DCR 2451.)

Cross references. — As to day care generally, see Chapter 3 of Title 3.

Section references. — This section is referred to in § 6-2802.

Legislative history of Law 6-102. — See note to § 6-2801.

Legislative history of Law 6-121. — See note to § 6-2801.

§ 6-2804. AIDS Program Coordination Office.

(a) The Mayor shall establish, within the Department of Human Services, an AIDS Program Coordination Office.

(b) The AIDS Program Coordination Office shall be supervised by the AIDS Program Coordination Officer who shall, at the direction of the Director of the Department of Human Services, be responsible for the coordination of and serving as the point of contact for the District of Columbia's comprehensive AIDS Health-Care Response Plan established by § 6-2802.

(c) The AIDS Program Coordination Officer shall:

(1) Analyze medical data, reports, and information to determine the effectiveness with which the AIDS program is meeting the needs of the residents of the District of Columbia;

(2) Coordinate and assist in the development of grant proposals to obtain funds from both the federal government and the private sector for AIDS and AIDS-related activities;

(3) Develop and coordinate, with other agencies of the District government, a program of health-care services delivery and other supportive services for persons with AIDS living at home;

(4) Disseminate information on AIDS to the public;

(5) Assist officials from the federal government, community groups, nursing homes, hospitals, and others in the coordination of AIDS plans, programs, and services delivery for persons with AIDS living in the District of Columbia;

(6) Serve as the liaison officer for the District's AIDS program to other District government agencies and monitor their compliance with the District's comprehensive AIDS program;

(7) Conduct community outreach and education programs; and

(8) Perform other duties appropriate to accomplish the objectives of this chapter. (Mar. 25, 1986, D.C. Law 6-102, § 5, 33 DCR 796; June 10, 1986, D.C. Law 6-121, § 5, 33 DCR 2451.)

Legislative history of Law 6-102. — See note to § 6-2801.

Legislative history of Law 6-121. — See note to § 6-2801.

§ 6-2805. Confidentiality of medical records and information.

The provisions of the Preventive Health Services Amendments Act of 1985 (D.C. Law 6-83), pertaining to the confidentiality of medical records and information on persons with AIDS, shall be applicable to this chapter. (Mar. 25, 1986, D.C. Law 6-102, § 7; 33 DCR 796; June 10, 1986, D.C. Law 6-121, § 6, 33 DCR 2451.)

Legislative history of Law 6-102. — See note to § 6-2801.

Legislative history of Law 6-121. — See note to § 6-2801.

Delegation of authority pursuant to Law

6-121. — See Mayor's Order 86-171, September 30, 1986.

Cited in Applewhite v. United States, App. D.C., 614 A.2d 888 (1992).

§ 6-2806. Rules.

The Mayor may issue rules necessary to implement this chapter pursuant to subchapter I of Chapter 15 of Title 1. (Mar. 25, 1986, D.C. Law 6-102, § 7; 33 DCR 796; June 10, 1986, D.C. Law 6-121, § 7, 33 DCR 2451.)

Emergency act amendments. — For temporary addition of chapter, see § 2-4 of the HIV Testing of Certain Criminal Offenders Emergency Act of 1992 (D.C. Act 9-318, November 24, 1992, 39 DCR 9016).

Legislative history of Law 6-102. — See note to § 6-2801.

Legislative history of Law 6-121. — See note to § 6-2801.

CHAPTER 29. LITTER CONTROL ADMINISTRATION.

Sec.

- 6-2901. Purpose of chapter.
- 6-2902. Enforcement of regulations.
- 6-2903. Investigation and notice of nuisance.
- 6-2904. Response to notice of violation.
- 6-2905. Hearing.

Sec.

- 6-2906. Reinspection of premises.
- 6-2907. Penalties for violations.
- 6-2908. Hearing examiners.
- 6-2909. Appeals.
- 6-2910. Mayor to issue rules.

§ 6-2901. Purpose of chapter.

The purpose of this chapter is to provide civil sanctions and to eliminate criminal liability for violating a variety of local laws and rules, to provide for civil enforcement of these violations, and to establish an expeditious administrative adjudicative system. (Mar. 25, 1986, D.C. Law 6-100, § 2, 33 DCR 781.)

Legislative history of Law 6-100. — Law 6-100, the “Litter Control Administrative Act of 1985,” was introduced in Council and assigned Bill No. 6-297, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on December 17, 1985, and January 14, 1986, respectively.

Signed by the Mayor on January 28, 1986, it was assigned Act No. 6-128 and transmitted to both Houses of Congress for its review.

Delegation of authority pursuant to Law 6-100. — See Mayor’s Order 86-160, September 19, 1986.

§ 6-2902. Enforcement of regulations.

(a)(1) The Mayor of the District of Columbia (“Mayor”), through the Department of Public Works, shall enforce the District of Columbia Solid Waste Management and Multi-Material Recycling Act of 1988, §§ 601, 603, 604, 605, 606(a), (c), and (h), 607(a), (b), (c), (d), (e), (f), (g), (h), and (j), 608(a), 609(a), and 612 of Chapter 3 in Title 8 of the District of Columbia Health Regulations, enacted June 29, 1971 (Reg. 71-21; 21 DCMR 700.1 *et seq.*), §§ 3, 4, 5, 6, and 7 of Solid Waste Collection: Containers to be Used, effective February 21, 1973 (19 DCR 497; 21 DCMR 708), and a number of rules recorded in §§ 101, 102, 103, 104, 108, 900.7, 900.8, 900.10, 1000, 1001, 1002, 1005, 1008, 1009, 2000, 2001, 2002, and 2010 of 24 DCMR. The Department of Public Works shall hear contested cases arising from violations of the regulations listed in this section in accordance with the adjudicative system provided in §§ 6-2904, 6-2905, and 6-2908.

(2) Violations of the regulations listed in paragraph (1) of this subsection shall be subject to the civil administrative system and the civil sanctions provided in this chapter.

(b) The adjudication system shall comply with Chapter 15 of Title 1. (Mar. 25, 1986, D.C. Law 6-100, § 3(a), (b), 33 DCR 781; Oct. 9, 1987, D.C. Law 7-38, § 2(a), 34 DCR 5326; Mar. 16, 1989, D.C. Law 7-226, § 19(a), 36 DCR 595; Feb. 5, 1994, D.C. Law 10-68, § 17, 40 DCR 6311.)

Section references. — This section is referred to in §§ 6-2903, 6-2907, and 6-2908.

Effect of amendments. — D.C. Law 10-68 substituted “1988” for “1987” in (a)(1).

Legislative history of Law 6-100. — See note to § 6-2901.

Legislative history of Law 7-38. — Law 7-38, the “Litter Control Expansion Amendment Act of 1987,” was introduced in Council and assigned Bill No. 7-169, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on June

30, 1987, and July 14, 1987, respectively. Signed by the Mayor on July 23, 1987, it was assigned Act No. 7-66 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-226. — Law 7-266, the “District of Columbia Solid Waste Management and Multi-Material Recycling Act of 1988,” was introduced in Council and assigned Bill No. 7-378, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on November 29, 1988 and December 13, 1988, respectively. Signed by the Mayor on January 10, 1989, it was assigned Act No. 7-301 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-68. — D.C. Law 10-68, the “Technical Amendments Act of 1993,” was introduced in Council and assigned Bill No. 10-166, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 23, 1993, it was assigned Act No. 10-107 and transmitted to both Houses of Congress for its review. D.C. Law 10-68 became effective on February 5, 1994.

References in text. — The “District of Columbia Solid Waste Management and Multi-Material Recycling Act of 1988”, referred to in the first sentence of subsection (a)(1), is D.C. Law 7-226.

§ 6-2903. Investigation and notice of nuisance.

(a) For the purposes of this chapter, the term “nuisance” means a condition or circumstance violative of the provisions listed in § 6-2902(a).

(b) The Mayor may, consistent with constitutional safeguards, enter a nonresidential premises and inspect and investigate an allegation about a nuisance. The Mayor may act upon the Mayor’s own information or observation or upon the information or the observation of another person.

(c)(1) If the Mayor finds on the premises a nuisance actionable under this chapter, then, after the inspection and the investigation, the Mayor shall issue a notice of violation to the person alleged to have created the nuisance or to the property owner.

(2) The notice of violation may be served on the owner, the owner’s authorized agent, the building superintendent, the operator of equipment, or any other responsible individual at the premises or the Mayor may deliver the notice by certified mail to the owner of the premises or to the person responsible for the nuisance or the Mayor may post the notice in a conspicuous place on the premises in violation. If the owner cannot be identified with reasonable certainty, the Mayor may conspicuously post the notice on the premises alleged to be in violation and deliver a copy of the notice to the Director of the Department of Finance and Revenue pursuant to paragraph (3) of this subsection.

(3) The Director of the Department of Finance and Revenue is authorized to receive notices of violation of this chapter on behalf of any resident or non-resident person who owns property in the District, if the person has not provided to the Director of the Department of Finance and Revenue a mailing address. The Director of the Department of Public Works shall post a copy of the notice served on the Director of the Department of Finance and Revenue in a conspicuous place on the property.

(d) The Mayor shall prepare the notice of violation and include in it the following:

- (1) The location, date, and time that the nuisance took place or that the Mayor investigated the nuisance;
- (2) The law or regulation violated;
- (3) The amount of the fine assessed;

- (4) The action necessary to abate the nuisance;
 - (5) The person's right to request a hearing on the alleged nuisance and the procedure for making the request;
 - (6) The manner, location, and time for paying the fine or arranging a hearing;
 - (7) A statement that failure to answer the notice of violation within 14 calendar days after the notice has been issued may result in additional penalties; and
 - (8) Reinspection information, which includes the date and time of the reinspection and the condition that the property should be in at the time of reinspection.
- (e) The Department of Public Works shall keep a copy of the notice of violation and shall attach to it a certificate attesting to the manner that the Mayor issued the notice. (Mar. 25, 1986, D.C. Law 6-100, § 4, 33 DCR 781; Sept. 20, 1989, D.C. Law 8-31, § 2(a)-(d), 36 DCR 4750.)

Legislative history of Law 6-100. — See note to § 6-2901.

Legislative history of Law 8-31. — Law 8-31, the "District of Columbia Solid Waste Regulations Amendment Act of 1989," was introduced in Council and assigned Bill No. 8-135, which was referred to the Committee on

Public Works. The Bill was adopted on first and second readings on May 30, 1989 and June 13, 1989, respectively. Signed by the Mayor on June 27, 1989, it was assigned Act No. 8-54 and transmitted to both Houses of Congress for its review.

§ 6-2904. Response to notice of violation.

(a) In response to a notice of violation, a person issued a notice may do 1 of the following:

- (1) Admit the violation;
- (2) Admit the violation, but with an explanation; or
- (3) Deny the violation.

(b) Except as provided in subsection (c) of this section, no response other than those listed in subsection (a) of this section shall be regarded as an answer.

(c) A person who appears at an administrative hearing pursuant to § 6-2905 and refuses to respond by admitting, by admitting with explanation, or by denying the violation shall be regarded as having denied the violation according to subsection (a)(3) of this section.

(d) A person admitting the violation shall pay the civil fine in person or by mail and shall certify on the back of the notice that the nuisance has been abated. If upon reinspection it is revealed that the nuisance still exists, the Mayor may impose the sanction provided in § 6-2907(d).

(e) A person admitting the violation with explanation or a person denying the violation shall schedule a hearing within 14 calendar days after the date the Mayor issued the notice.

(f) If a person to whom a notice of violation has been issued fails to respond to the notice within 14 calendar days after the date the notice was issued, then the person shall be liable for a penalty equal to the civil fine plus the costs of abating the nuisance or of preventing the violation from recurring as provided

in § 6-2907(c)(2) and (d). (Mar. 25, 1986, D.C. Law 6-100, § 5, 33 DCR 781; Sept. 20, 1989, D.C. Law 8-31, § 2(e), 36 DCR 4750.)

Section references. — This section is referred to in §§ 6-2902 and 6-2907.

Legislative history of Law 6-100. — See note to § 6-2901.

Legislative history of Law 8-31. — See note to § 6-2903.

§ 6-2905. Hearing.

(a) A hearing for judging a violation actionable under this chapter shall be held before a hearing examiner referred to in § 6-2908, and the hearing shall be conducted according to subchapter I of Chapter 15 of Title 1.

(b)(1) After due consideration of the evidence and arguments made at the hearing, the hearing examiner shall determine whether the violation has been established by a preponderance of evidence.

(2) Where a determination is made that a violation is not established, an order dismissing the charge shall be entered.

(3) Where a determination is made that the violation has been established, an appropriate order shall be entered in the records of the hearing.

(c) In the case of a person who is found liable for a violation, the hearing examiner may order the respondent to do any or all of the following:

(1) To abate the nuisance;

(2) To pay the civil fine established or stated in § 6-2907(b) and (c); or

(3) If the person consents, to perform a specified number of hours of volunteer community service as provided for in § 6-2907(e) and in rules required by § 6-2910.

(d) An order rendered pursuant to a determination that a violation has been established, or pursuant to the receipt of a response admitting the violation, shall be a civil order.

(e) A person who has responded to a notice of violation and fails, without good cause, to appear at the scheduled hearing shall be liable for a penalty equal to twice the amount of the civil fine plus any costs of abating or preventing the violation consistent with provisions of § 6-2907.

(f) If a person to whom a notice of violation has been issued fails to appear at a hearing, then the hearing examiner may proceed with the hearing and render a final disposition of the case.

(g) Subject to the enactment of appropriations, civil fines, solid waste disposal fees, and other related fees collected from solid waste disposers and the proceeds from the sale of forfeited conveyances shall be used to offset the cost of implementing this chapter, and abating solid waste nuisances. Subject to the enactment of appropriations, excess monies shall be used to fund recycling activities in accordance with § 6-3415. (Mar. 25, 1986, D.C. Law 6-100, § 6, 33 DCR 781; Nov. 20, 1993, D.C. Law 10-62, § 7(a)(1), 41 DCR 7237; May 20, 1994, D.C. Law 10-117, § 8(a)(1), 41 DCR 524.)

Section references. — This section is referred to in §§ 6-2902, 6-2904, 6-2906, 6-2908, and 6-2910.

Effect of amendments. — D.C. Law 10-117 rewrote (g).

Temporary amendments of section. —

Section 7(a)(1) of D.C. Law 10-62 rewrote (g).

Section 8(b) of D.C. Law 10-62 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Illegal Dumping Enforcement Act of 1993 whichever occurs first.

Emergency act amendments. — For temporary amendments of section, see § 7(a)(1) of the Illegal Dumping Enforcement Emergency Act of 1993 (D.C. Act 10-89, August 4, 1993, 40 DCR 6074) and § 7(a)(1) of the Illegal Dumping Enforcement Congressional Recess Emergency Act of 1993 (D.C. Act 10-138, November 1, 1993, 40 DCR 7741).

Legislative history of Law 6-100. — See note to § 6-2901.

Legislative history of Law 10-62. — D.C. Law 10-62, the "Illegal Dumping Enforcement Temporary Act of 1993," was introduced in

Council and assigned Bill No. 10-353. The Bill was adopted on first and second readings on July 13, 1993, and September 21, 1993, respectively. Signed by the Mayor on October 4, 1993, it was assigned Act No. 10-115 and transmitted to both Houses of Congress for its review. D.C. Law 10-62 became effective on November 20, 1993.

Legislative history of Law 10-117. — Law 10-117, the "Illegal Dumping Enforcement Act of 1994," was introduced in Council and assigned Bill No. 10-249, which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on December 7, 1993, and January 4, 1994, respectively. Signed by the Mayor on January 25, 1994, it was assigned Act No. 10-181 and transmitted to both Houses of Congress for its review. D.C. Law 10-117 became effective on May 20, 1994.

§ 6-2906. Reinspection of premises.

(a) The Mayor shall reinspect a premises for which a notice of violation has been issued and for which abatement has been required.

(b) The reinspection shall occur within a reasonable time of the date of issuance of the notice of violation or within a reasonable time of a hearing examiner order pursuant to § 6-2905(c), and the reinspection shall be for the purposes of assessing and verifying the abatement.

(c) If the Mayor determines that the nuisance has not been abated satisfactorily, then the Mayor shall abate the nuisance and may impose the sanction provided in § 6-2907(d). (Mar. 25, 1986, D.C. Law 6-100, § 7, 33 DCR 781.)

Legislative history of Law 6-100. — See note to § 6-2901.

§ 6-2907. Penalties for violations.

(a) The Mayor may impose any or all sanctions stated in this section.

(b)(1) The Mayor shall prepare and the Council of the District of Columbia ("Council") shall approve a schedule of fines for violating rules listed in § 6-2902, and the fines, when adopted, shall be printed in the D.C. Register and in 1 or more of the daily newspapers published in the District of Columbia ("District").

(2) The schedule shall not be enforced until 30 days after publication in the D.C. Register.

(3) The Mayor may modify this schedule of fines by rulemaking. The modification shall become effective at the end of 45 calendar days unless the Council, during the 45-day period, adopts a resolution disapproving the Mayor's modification.

(c) In addition to the civil fine permitted under subsection (b) of this section, the following penalties may be imposed:

(1) In the case of a person receiving a notice of violation who fails to answer the notice within the time specified by § 6-2904(f), a penalty equal to the amount of the civil fine; and

(2) In the case of a person receiving a notice of violation who answers but fails without good cause to appear on the date scheduled for the hearing, a penalty equal to twice the amount of the civil fine.

(d) The Mayor may recover up to 3 times the cost and expense incurred by the Mayor for abating the nuisance, preventing the recurrence of the violation, and cleaning and clearing the site where the unlawful disposal occurred and for properly disposing of the solid waste.

(e) The hearing examiner may agree with the person subject to penalties under this section to allow an alternative sanction requiring the respondent to perform, on a voluntary basis, a specific number of hours of community service comparable to the severity of the violation. The assignment will be made by the hearing examiner according to rules provided for by § 6-2910 and in conjunction with a representative of the District of Columbia Department of Public Works.

(f)(1) The District shall have a continuing lien upon any land and the improvements on the land to which fines or penalties have been imposed pursuant to this chapter. Each lien placed pursuant to this chapter shall be filed at the Office of the Recorder of Deeds.

(2) The lien shall have priority over all other liens except liens for District taxes and District water and sewer charges.

(3) If any civil fine, penalty, or cost is unpaid 6 months after the date of the final notice of the charges, the subject property may be sold for the unpaid civil fine, penalty, cost, and interest due the District government at the next tax sale in the same manner and under the same conditions as property sold for delinquent general taxes.

(4) The proceeds of the sale shall be credited to the General Fund of the District of Columbia for use in accordance with § 6-3415.

(5) For the purposes of any property sold pursuant to paragraph (3) of this subsection, the redemption period specified in §§ 47-1304, 47-1306, 47-1307, 47-1312, and 47-847, shall be 6 months.

(g) The Mayor may require the owner of vacant property in the District to fence or otherwise enclose the property to prevent the recurrence of a violation of any part of this chapter.

(h)(1) The Mayor may require the payment of an interest charge to be assessed against the total fine, penalty, and charge for abatement services performed by the Mayor that have not been satisfied, in full, within 30 days of the date that final notice, which requests payment, is mailed to the property owner. The rate of interest authorized by this section shall not exceed 1½% per month or part of a month that accrues 30 days from the date of the final notice.

(2) If a private agency collects any outstanding fines, penalties, charges, and interest due the District government, the Mayor may require an additional payment to cover the cost of collecting the outstanding fine, penalty, charge, and interest. (Mar. 25, 1986, D.C. Law 6-100, § 8, 33 DCR 781; Sept. 20, 1989, D.C. Law 8-31, § 2(f), 36 DCR 4750; Nov. 20, 1993, D.C. Law 10-62, § 7(a)(2), 41 DCR 7237; May 20, 1994, D.C. Law 10-117, § 8(a)(2), (a)(3), 41 DCR 524.)

Cross references. — As to time period for redemption of properties, see § 47-1304.

As to time period for redemption of properties, see § 47-1306.

Section references. — This section is referred to in §§ 6-2904, 6-2905, 6-2906, 6-2908, 6-2910, 47-847, 47-1304, 47-1306, 47-1307, and 47-1312.

Effect of amendments. — D.C. Law 10-117 rewrote (d); and added “for use in accordance with § 6-3415” at the end of (f)(4).

Temporary amendments of section. — Section 7(a)(2) of D.C. Law 10-62 rewrote (d); and § 7(a)(3) of D.C. Law 10-62 substituted “fund established under § 6-2905(g)” for “General Fund of the District of Columbia” in (f)(4).

Section 8(b) of D.C. Law 10-62 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Illegal Dumping Enforcement Act of 1993 whichever occurs first.

Emergency act amendments. — For temporary amendments of section, see § 7(a)(2)

and (a)(3) of the Illegal Dumping Enforcement Emergency Act of 1993 (D.C. Act 10-89, August 4, 1993, 40 DCR 6074) and § 7(a)(2) and (a)(3) of the Illegal Dumping Enforcement Congressional Recess Emergency Act of 1993 (D.C. Act 10-138, November 1, 1993, 40 DCR 7741).

Legislative history of Law 6-100. — See note to § 6-2901.

Legislative history of Law 8-31. — See note to § 6-2903.

Legislative history of Law 10-62. — See note to § 6-2905.

Legislative history of Law 10-117. — See note to § 6-2905.

Approval of schedule of fines for violation of rules listed in § 6-2902. — Pursuant to Resolution 7-63, the “Litter Control Administration Act Schedule of Fines Approval Resolution of 1987,” effective May 19, 1987, the Council approved the proposed schedule of fines for violations of rules referenced in § 3 of the Litter Control Act which was transmitted to Council by the Mayor on April 14, 1987.

§ 6-2908. Hearing examiners.

(a) The Mayor shall appoint a chief hearing examiner and other hearing examiners needed to implement this chapter, and the administration of the hearing provided for in this section and in § 6-2905 shall be regulated by the chief hearing examiner.

(b) The powers of hearing examiners shall include, but not be limited to, the following:

(1) To preside over hearings in contested matters arising out of the statutes and the rules referred to in § 6-2902 and to do so in accordance with Chapter 15 of Title 1;

(2) To require the respondent to abate the violations;

(3) To charge civil fines, penalties, and abatement costs established in §§ 6-2905(e) and 6-2907;

(4) To agree to alternative sanctions, under § 6-2907(e) and according to rules to be established under § 6-2910, so that the agreed to sanctions allow the respondent to perform voluntarily a specific number of hours of community service;

(5) To suspend or modify fines, penalties, and abatement costs;

(6) To set aside and reopen a final disposition upon application and for good cause shown; and

(7) To require the attendance of witnesses by subpoena, administer oaths, take the testimony of witnesses under oath, and dismiss, rehear, and continue cases.

(c)(1) If a person refuses to obey a hearing examiner’s demand that the person testify or comply with a subpoena, the hearing examiner may request the Superior Court of the District of Columbia to compel the person to testify or to obey the subpoena.

(2) If the court consents to the hearing examiner’s request and compels the person to testify or to obey the subpoena, but if the person disobeys the

court, then the person shall be in contempt of court, and the court may use its equity powers to compel the obedience of the person. (Mar. 25, 1986, D.C. Law 6-100, § 9, 33 DCR 781.)

Section references. — This section is referred to in §§ 6-2902 and 6-2905.

Legislative history of Law 6-100. — See note to § 6-2901.

§ 6-2909. Appeals.

(a) The hearing examiner's decision may be appealed within 15 days of the issuance of the decision to the Board of Appeals and Review.

(b) The parties may appeal a decision of the Board of Appeals and Review within 15 days of the issuance of the decision to the District of Columbia Court of Appeals. (Mar. 25, 1986, D.C. Law 6-100, § 10, 33 DCR 781.)

Legislative history of Law 6-100. — See note to § 6-2901.

§ 6-2910. Mayor to issue rules.

The Mayor shall issue rules to implement this chapter under the provisions of subchapter I of Chapter 15 of Title 1, and the rules shall, at the least, establish a program of community service which may be used, according to an agreement under §§ 6-2905(c)(3) and 6-2907(e), as an alternative sanction under § 6-2907(e). (Mar. 25, 1986, D.C. Law 6-100, § 11, 33 DCR 781.)

Section references. — This section is referred to in §§ 6-2905, 6-2907, and 6-2908.

Legislative history of Law 6-100. — See note to § 6-2901.

CHAPTER 29A. ILLEGAL DUMPING ENFORCEMENT.

Sec.

6-2911. Definitions.

6-2912. Prohibition and penalties.

6-2913. Enforcement.

Sec.

6-2914. Bounty.

6-2915. Forfeitures.

§ 6-2911. Definitions.

For the purposes of this chapter, the term:

(1) "Dispose" means to discharge, deposit, dump, or place any solid waste into or on any land or water.

(2) "District" means the District of Columbia.

(3) "Mayor" means the Mayor of the District of Columbia.

(4) "Motor vehicle" means any conveyance propelled by an internal combustion engine, electricity, or steam.

(5) "Person" means any individual, partnership, corporation (including a government corporation), trust, association, firm, joint stock company, organization, commission, the District or federal government, or any other entity.

(6) "Solid waste" means any combustible refuse, noncombustible refuse, medical waste, or hazardous waste. Solid waste includes dirt, sand, sawdust, gravel, clay, loam, stone, rocks, rubble, building rubbish, shavings, trade or household waste, refuse, ashes, manure, vegetable matter, paper, dead animals, garbage or debris of any kind, any other organic or inorganic material or thing, or any other offensive matter. (Nov. 20, 1993, D.C. Law 10-62, § 2, 40 DCR 7237; May 20, 1994, D.C. Law 10-117, § 2, 41 DCR 524.)

Temporary addition of chapter. — D.C. Law 10-62 enacted §§ 6-2911 through 6-2914, comprising chapter 29A of title 6.

Temporary amendment of section. — Section 3(a) of D.C. Law 10-191 amended (1) to read as follows:

"For the purposes of this chapter, the term:

"(1) 'Dispose' means to discharge, deposit, dump, or place any solid waste in the District of Columbia."

Section 4(b) of D.C. Law 10-191 provided that this act shall expire on the 225th day of its having taken effect or upon the effective date of the Recycling Fee and Illegal Dumping Amendment Act of 1994, whichever occurs first.

Emergency act amendments. — For temporary addition of chapter 29A, see §§ 2-6 of the Illegal Dumping Enforcement Emergency Act of 1993 (D.C. Act 10-89, August 4, 1993, 40 DCR 6074) and §§ 2-6 of the Illegal Dumping Enforcement Congressional Recess Emergency Act of 1993 (D.C. Act 10-138, November 1, 1993, 40 DCR 7741).

For temporary amendment of section, see § 3 (a) of the Recycling Fee and Illegal Dumping Emergency Amendment Act of 1994 (D.C. Act 10-269, July 7, 1994, 41 DCR 4669).

Legislative history of Law 10-62. — D.C. Law 10-62, the "Illegal Dumping Enforcement

Temporary Act of 1993," was introduced in Council and assigned Bill No. 10-353. The Bill was adopted on first and second readings on July 13, 1993, and September 21, 1993, respectively. Signed by the Mayor on October 4, 1993, it was assigned Act No. 10-115 and transmitted to both Houses of Congress for its review. D.C. Law 10-62 became effective on November 20, 1993.

Legislative history of Law 10-117. — Law 10-117, the "Illegal Dumping Enforcement Act of 1994," was introduced in Council and assigned Bill No. 10-249, which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on December 7, 1993, and January 4, 1994, respectively. Signed by the Mayor on January 25, 1994, it was assigned Act No. 10-181 and transmitted to both Houses of Congress for its review. D.C. Law 10-117 became effective on May 20, 1994.

Legislative history of Law 10-191. — Law 10-191, the "Recycling Fee and Illegal Dumping Temporary Amendment Act of 1994," was introduced in Council and assigned Bill No. 10-701. The Bill was adopted on first and second readings on June 21, 1994, and July 19, 1994, respectively. Signed by the Mayor on August 4, 1994, it was assigned Act No. 10-317 and trans-

mitted to both Houses of Congress for its review. D.C. Law 10-191 became effective on October 1, 1994.

Expiration of Law 10-62. — Section 8(b) of D.C. Law 10-62 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Illegal Dumping Enforcement Act of 1993 whichever occurs first.

Mayor authorized to issue regulations. — Section 6 of D.C. Law 10-62 provided that

the Mayor is authorized to promulgate regulations necessary to implement and enforce this act in accordance with subchapter I of Chapter 15 of Title 1.

Mayor authorized to promulgate regulations. — Section 7 of D.C. Law 10-117 provided that the Mayor is authorized to promulgate regulations necessary to implement and enforce this chapter in accordance with subchapter I of Chapter 15 of Title 1.

§ 6-2912. Prohibition and penalties.

(a) It shall be unlawful for any person to cause or permit any solid waste transported in a motor vehicle to be disposed in or upon any street, lot, park, public place, or other area whether publicly or privately owned, unless the site is authorized for the disposal of solid waste by the Mayor. A disposal of solid waste that is subject to a civil sanction under Chapter 29 of this title shall not be unlawful under this chapter.

(b) Any person violating subsection (a) of this section shall be liable to arrest and upon conviction shall be deemed guilty of a misdemeanor and shall be subject to a fine for each offense not to exceed \$1,000, or shall be imprisoned for a period not to exceed 60 days, or both, in the discretion of the court. Any person who knowingly disposes of hazardous waste in violation of this chapter shall be punished by a fine not to exceed \$25,000 for each offense or imprisoned for a period not to exceed 1 year, or both, in the discretion of the court.

(c) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of this chapter, or any rules or regulations issued under the authority of this chapter, provided that a civil fine up to \$5,000 may be assessed for each offense. Any person who knowingly disposes of hazardous waste in violation of this chapter shall be liable for a civil penalty in an amount not to exceed \$25,000 for each violation. Adjudication of any civil infraction of this chapter shall be enforced by the Mayor pursuant to § 6-2902.

(d) In addition to any other penalties provided in this section, a person's ownership interest in a motor vehicle used in violating this chapter shall be subject to seizure and forfeiture. All seizures and forfeitures of motor vehicles under this chapter shall be in accordance with § 6-2915.

(e) The Mayor is authorized to establish and collect a reasonable fee for the cost of towing and storing seized motor vehicles. A storage fee shall not be charged for the first 24-hour period following the seizure of a motor vehicle. If a person is found not liable for a violation of this chapter, the Mayor shall waive any towing and storage fees assessed under this chapter and refund any penalties paid.

(f) Any person violating subsection (a) of this section, shall also be liable and responsible for paying 3 times the cost and expense incurred by the Mayor for cleaning and clearing the site where the unlawful disposal occurred and for properly disposing of the solid waste. Payment by the violator shall be made within 10 days of demand by the Mayor.

(g) The Mayor may deny, revoke, or not renew the business license, permit, or motor vehicle registration issued, or to be issued, to any person who has

committed a violation of this chapter, provided that the business license, permit, or motor vehicle registration is substantially related to the commission of the offense of unlawful disposal of solid waste in the District. The business license, permit, or motor vehicle registration may not be issued or reissued until all fines, penalties, and fees assessed under this section have been fully satisfied.

(h) The Mayor may impose any sanction provided in Chapter 29 of this title, to the extent that it is not inconsistent with this chapter. (Nov. 20, 1993, D.C. Law 10-62, § 3, 40 DCR 7237; May 20, 1994, D.C. Law 10-117, § 3, 41 DCR 524.)

Section references. — This section is referred to in § 6-2914.

Temporary addition of chapter. — See note to § 6-2911.

Temporary amendment of section. — Section 3(b) of D.C. Law 10-191 amended (a) to read as follows: “(a) It shall be unlawful for any person to cause or permit any solid waste transported in a motor vehicle to be disposed in or upon any street, lot, park, building, place, or other area whether publicly or privately owned, unless the site is authorized for the disposal of solid waste by the Mayor. A disposal of solid waste that is subject to a civil sanction under Chapter 29 of this title shall not be unlawful under this chapter.”

Section 13 of D.C. Law 10-251 amended (a) to read as follows: “(a) It shall be unlawful for any person to cause or permit any solid waste transported in a motor vehicle to be disposed in or upon any street, lot, park, public place or other area whether publicly or privately owned, unless the site is a solid waste facility owned or operated by, or on behalf of, the District of Columbia, or is a solid waste facility which has obtained a solid waste facility permit from the Mayor. A disposal of solid waste that is subject to a civil sanction under Chapter 29 of this title shall not be unlawful under this chapter.”

Section 4(b) of D.C. Law 10-191 provided that this act shall expire on the 225th day of its having taken effect or upon the effective date of the Recycling Fee and Illegal Dumping Amendment Act of 1994, whichever occurs first.

Section 16(b) of D.C. Law 10-251 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Solid Waste Facility Permit Amendment Act of 1995, whichever occurs first.

Emergency act amendments. — For temporary amendment of section, see § 3(b) of the Recycling Fee and Illegal Dumping Emergency Amendment Act of 1994 (D.C. Act 10-269, July 7, 1994, 41 DCR 4669).

For temporary amendment of section, see § 13 of the Solid Waste Facility Permit Emergency Act of 1994 (D.C. Act 10-384, December 28, 1994, 42 DCR 45).

Legislative history of Law 10-62. — See note to § 6-2911.

Legislative history of Law 10-117. — See note to § 6-2911.

Legislative history of Law 10-251. — Law 10-251, the “Solid Waste Facility Permit Temporary Act of 1994,” was introduced in Council and assigned Bill No. 10-835. The Bill was adopted on first and second readings on December 6, 1994, and January 3, 1995, respectively. Signed by the Mayor on January 18, 1995, it was assigned Act No. 10-398 and transmitted to both Houses of Congress for its review. D.C. Law 10-251 became effective on March 23, 1995.

Expiration of Law 10-62. — See note to § 6-2911.

§ 6-2913. Enforcement.

The Mayor may establish a special law enforcement unit with police powers to enforce this chapter, Chapter 29 of this title, Chapter 7 of this title, subchapter III of Chapter 9 of this title, and the Water and Sanitation Codes, as compiled in 21 DCMR 700, et seq. (Nov. 20, 1993, D.C. Law 10-62, § 4, 40 DCR 7237; May 20, 1994, D.C. Law 10-117, § 4, 41 DCR 524.)

Temporary addition of chapter. — See note to § 6-2911.

Legislative history of Law 10-62. — See note to § 6-2911.

Legislative history of Law 10-117. — See note to § 6-2911.

Expiration of Law 10-62. — See note to § 6-2911.

§ 6-2914. Bounty.

The Mayor is authorized to offer and pay rewards for information that, in the opinion of the Mayor, leads to the apprehension and charging of any person for violating § 6-2912(a) and the collection of a penalty or fine from the person. (May 20, 1994, D.C. Law 10-117, § 5, 41 DCR 524.)

Legislative history of Law 10-117. — See note to § 6-2911.

§ 6-2915. Forfeitures.

(a) All motor vehicles which are used, or intended to be used, to transport, or in any manner to facilitate a violation of this chapter shall be subject to forfeiture, except that:

(1) No motor vehicle used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;

(2) No motor vehicle is subject to forfeiture under this section by reason of any act or omission that the owner establishes was committed or omitted by a third party without the owner's knowledge and consent; and

(3) A forfeiture of a motor vehicle encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of, nor consented to, the act or omission.

(b) A motor vehicle subject to forfeiture under this section may be seized by law enforcement officials upon process issued by the Superior Court of the District of Columbia having jurisdiction over the motor vehicle, or without process if authorized by law.

(c)(1) A motor vehicle taken or detained under this section shall not be subject to replevin, but shall be deemed to be in the custody of the Mayor. When a motor vehicle is seized under this chapter, the Mayor shall:

(A) Place the motor vehicle under seal;

(B) Remove the motor vehicle to a place designated by the Mayor; or

(C) Remove the motor vehicle to an appropriate location for disposition in accordance with law.

(2)(A) After a proper showing of probable cause for the seizure of the motor vehicle is made, the Mayor shall cause notice of the seizure and the Mayor's intention to forfeit and sell or otherwise dispose of the motor vehicle in accordance with this section to be published for at least 2 successive weeks in a local newspaper of general circulation. In addition, the Mayor shall provide written notice of the seizure together with information on the applicable procedures for claiming the motor vehicle to each party who is known, or in the exercise of reasonable diligence should be known, by the Mayor to have a right of claim to the seized motor vehicle. Notice to each party shall be by registered or certified mail, return receipt requested.

(B) Any person claiming an interest in the motor vehicle may, at any time within 30 days from the date of receipt or publication of notice, whichever is later, of seizure, file with the Mayor a claim stating his or her interest in the motor vehicle. Upon the filing of a claim, the claimant shall give a bond to the District in the sum of \$2,500 or 10% of the fair market value of the claimed motor vehicle (as appraised by the Chief of the Metropolitan Police Department), whichever is lower, but not less than \$250, with sureties to be approved by the Mayor. In case of forfeiture of the claimed motor vehicle, the costs and expenses of the forfeiture proceedings shall be deducted from the bond. Any costs that exceed the bond amount and the proceeds from the sale of the conveyance shall be paid by the claimant. In determining the fair market value of the motor vehicle seized, the Chief of the Metropolitan Police Department shall consider any verifiable and reasonable evidence of value that the claimant may present. The balance of the proceeds shall be transferred to the Department of Public Works and used to offset the cost of implementing this chapter and Chapter 29 of this title, and to abate solid waste nuisances. Subject to the enactment of appropriations, excess monies shall be used to fund recycling activities in accordance with § 6-3415.

(C) If a claim and bond (or application for a waiver of bond) are not filed within 30 days of receipt or publication of notice, whichever is later, and the Mayor determines that the motor vehicle is forfeitable under this section, the Mayor shall declare the motor vehicle forfeited and shall dispose of the motor vehicle in accordance with the provisions of paragraph (3) of this subsection. If the Mayor determines that the seized motor vehicle is not forfeitable under this section, and is not otherwise subject to forfeiture, the Mayor shall return the motor vehicle to its rightful owner.

(D) If the seized motor vehicle is not forfeited or disposed of in accordance with subparagraph (C) of this paragraph, the Mayor shall request the Corporation Counsel to apply to the Superior Court of the District of Columbia for forfeiture of the motor vehicle.

(E) Whenever any person who has an interest in forfeited conveyance files with the Mayor, either before or after the sale or disposition of motor vehicle, a petition for remission or mitigation of the forfeiture, the Mayor shall remit or mitigate the forfeiture upon the terms and conditions as the Mayor deems reasonable if the Mayor finds that:

(i) The forfeiture was incurred without willful negligence or without any intention on the part of the petitioner to violate the law; or

(ii) Mitigating circumstances justify the remission or mitigation of the forfeiture.

(F) In all suits or actions brought for forfeiture of any motor vehicle seized under this section when the motor vehicle is claimed by any person, the burden of proof shall be on the claimant once the Mayor has established probable cause as provided in subsection (a) of this section.

(3) When a motor vehicle is forfeited under this section, the Mayor shall:

(A) Retain the motor vehicle for official use; or

(B) Sell the motor vehicle if it is not required by law to be destroyed and is not harmful to the public. All proper expenses of the proceedings for

forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs shall be deducted from the proceeds.

(4) Any property contained in the motor vehicle at the time of seizure may be held for evidentiary purposes until such time as the forfeiture proceeding is concluded, or the Corporation Counsel determines that the property is no longer needed for evidentiary purposes, whichever is sooner. Any property that is not needed for evidentiary purposes may be returned to the person who has a right of claim to the property. The Mayor may dispose of any solid waste contained in the motor vehicle at the time of seizure and collect up to 3 times the cost and expense incurred for the proper disposal. If it appears to the Mayor that any property seized under this section is liable to perish, waste, or be greatly reduced in value by the keeping, or that the expense of keeping is disproportionate to the value of the property, the Mayor may proceed to advertise and sell the property at auction or otherwise dispose of the property.

(d) In the event of seizure pursuant to subsection (b) of this section, proceedings under subsection (c) of this section shall be instituted promptly. (Nov. 20, 1993, D.C. Law 10-62, § 5, 40 DCR 7237; renumbered May 20, 1994, D.C. Law 10-117, § 6, 41 DCR 524.)

Section references. — This section is referred to in § 6-2912.

Temporary addition of chapter. — See note to § 6-2911.

Legislative history of Law 10-62. — See note to § 6-2911.

Legislative history of Law 10-117. — See note to § 6-2911.

Expiration of Law 10-62. — See note to § 6-2911.

CHAPTER 30. HAZARDOUS MATERIALS STUDY COMMISSION.

Sec.

6-3001 to 6-3005. [Repealed].

§§ 6-3001 to 6-3005. Hazardous Materials Study Commission established; reports; appointment of commission members; compensation; priorities; office space; supplies and services; staff; term of Commission.

Repealed. Mar. 16, 1989, D.C. Law 7-190, § 7, 35 DCR 8663.

Legislative history of Law 7-190. — Law 7-190, the “District of Columbia Hazardous Materials Transportation and Motor Carrier Safety Act of 1988,” was introduced in Council and assigned Bill No. 7-20, which was referred to the Committee on Public Works. The Bill was

adopted on first and second readings on October 25, 1988 and November 15, 1988, respectively. Signed by the Mayor on December 1, 1988, it was assigned Act No. 7-252 and transmitted to both Houses of Congress for its review.

CHAPTER 31. SECURITY AND FIRE ALARM SYSTEMS REGULATIONS.

Sec.

- 6-3101. Purpose.
- 6-3102. Definitions.
- 6-3103. Prohibition of prerecorded transmittals.
- 6-3104. Licensing of alarm dealers.
- 6-3105. Licensing of alarm agents.
- 6-3106. Duties of alarm dealers.
- 6-3107. Duties of security alarm users.
- 6-3108. Standards for security and fire alarm systems.

Sec.

- 6-3109. Exceptions.
- 6-3110. Inspections.
- 6-3111. Penalties generally.
- 6-3112. Notice of violation.
- 6-3113. Trial.
- 6-3114. Collection of fines and fees.
- 6-3115. Miscellaneous provisions.

§ 6-3101. Purpose.

The purpose of this chapter is to regulate the sale, lease, rental, installation, service, repair, maintenance, and use of security or fire alarm systems and components thereof, and to license security or fire alarm dealers and agents within the boundaries of the District of Columbia. (Sept. 26, 1980, D.C. Law 3-107, § 2, 27 DCR 3760; Mar. 29, 1988, D.C. Law 7-99, § 2(c), 35 DCR 1051.)

Legislative history of Law 3-107. — Law 3-107, the "Security and Fire Alarm Systems Regulations Act of 1980," was introduced in Council and assigned Bill No. 3-67, which was referred to the Committee on the Judiciary. The Bill was adopted on first, amended first and second readings on July 1, 1980, July 15, 1980 and July 29, 1980, respectively. Signed by the Mayor on July 31, 1980, it was assigned Act No. 3-232 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-99. — Law 7-99, the "Fire Alarm Systems Regulations Amendment Act of 1987," was introduced in Council and assigned Bill No. 7-91, which was referred to the Committee on Judiciary. The Bill was adopted on first and second readings on January 5, 1988 and January 19, 1988, respectively. Signed by the Mayor on February 9, 1988, it was assigned Act No. 7-143 and transmitted to both Houses of Congress for its review.

§ 6-3102. Definitions.

As used in this chapter, the term:

(1) "Alarm agent" means any employee of an alarm dealer whose duties include the installation, inspection, maintenance, service, or repair of alarm systems.

(2) "Central alarm station" means a facility operated by an alarm dealer for the purpose of receiving alarm signals from a subscriber and relaying information concerning such signals to the Metropolitan Police Department or the District of Columbia Fire Department for response to the scene.

(3) "Chief of Police" means the Chief of Police of the Metropolitan Police Department.

(4) "Day" means calendar day, unless otherwise defined.

(5) "District" means the District of Columbia government.

(6) "False alarm" means any alarm signal communicated to the Metropolitan Police Department or the District of Columbia Fire Department that is not in response to an actual or threatened fire, an actual or attempted burglary, a holdup, an assault, or an unlawful entry requiring an immediate police or fire department response. The term "false alarm" shall include a negligently or accidentally activated signal; a signal that is the result of faulty, malfunction-

ing, or improperly installed or maintained equipment; and a signal that is purposely activated to summon the Metropolitan Police Department or the District of Columbia Fire Department in non-emergency situations. The term "false alarm" shall not include a signal willfully activated by an alarm user upon a good faith belief that an actual or threatened fire, an actual or attempted burglary, a holdup, an assault, or an unlawful entry is about to occur or a signal activated by unusually severe weather conditions or other causes, that is identified and determined by the Mayor to be beyond the control of the user or of the alarm dealer.

(6a) "Fire Chief" means the Chief of the District of Columbia Fire Department.

(6b) "Fire Department" means the District of Columbia Fire Department.

(7) "Mayor" means the Mayor of the District of Columbia or the Mayor's designated agent.

(8) "Metropolitan Police Department" means the Metropolitan Police Department of the District of Columbia.

(9) "Notice" means written notice, served personally upon the addressee or a representative designated by him or by law to receive service of papers, or mailed by United States mail, postage prepaid, addressed to the person to be notified at his last known address. Service of such notice shall be effective upon completion of personal service, or upon placing the same in the custody of the United States Postal Service for delivery. Proof of service may be by written acknowledgment of the party served or his or her representative, by return receipt if served by registered or certified mail, or by certificate of the person making the service personally or by mail. The term "notice" shall not have the above meaning when used in the term "notice of violation".

(10) "Person" means any individual, firm, partnership, association, company, corporation, or organization of any kind.

(11) "Scene" means the premises upon which a security alarm is located.

(12) "Alarm dealer" means any person engaged in the business of selling, leasing, renting, installing, inspecting, maintaining, servicing, or repairing alarm systems or components thereof, or receiving alarm signals from a subscriber and relaying information concerning such signals to the Metropolitan Police Department or District of Columbia Fire Department for response to the scene.

(13) "Alarm system" means any device or system that transmits a signal visibly, audibly, electronically, mechanically, or by combination of these methods to indicate an actual or threatened fire, an actual or attempted burglary, a holdup, an assault, or an unlawful entry at a premises, requiring an immediate response to the scene by the Metropolitan Police Department or the District of Columbia Fire Department. The term "alarm system" shall include a service activated automatically, such as a burglary or fire alarm, and a device activated manually, such as a holdup alarm, but shall not include telephonic lines maintained and operated by public utilities under the regulation of the Public Service Commission over which the signal might be transmitted.

(14) "Subscriber" means any user who employs the services of a central alarm station.

(15) "User" means any person owning and operating an alarm system, regardless of whether the alarm system was purchased or obtained within the boundaries of the District of Columbia. (Sept. 26, 1980, D.C. Law 3-107, § 3, 27 DCR 3760; Mar. 29, 1988, D.C. Law 7-99, § 2(d), 35 DCR 1051.)

Legislative history of Law 3-107. — See note to § 6-3101.

Legislative history of Law 7-99. — See note to § 6-3101.

§ 6-3103. Prohibition of prerecorded transmittals.

Except for signaling devices jointly approved by the District of Columbia Fire Department and the Office on Aging under the Life Safety System, no person shall transmit or cause to be transmitted a prerecorded message to report any fire, burglary, holdup, or other emergency directly to the Metropolitan Police Department or the District of Columbia Fire Department by means of any telephone device, telephone attachment, alarm system, or other device. Any person violating this section shall be subject to a fine of up to \$100 for each offense. (Sept. 26, 1980, D.C. Law 3-107, § 4, 27 DCR 3760; Mar. 29, 1988, D.C. Law 7-99, § 2(e), 35 DCR 1051.)

Legislative history of Law 3-107. — See note to § 6-3101.

Legislative history of Law 7-99. — See note to § 6-3101.

§ 6-3104. Licensing of alarm dealers.

(a) No person shall engage in the business of an alarm dealer within the boundaries of the District of Columbia without first obtaining from the Mayor a license to be known as an alarm dealer's license. Such license shall be required in addition to any other license or registration required by law. Any person who engages in the business of an alarm dealer within the boundaries of the District of Columbia without having obtained such a license shall be subject to a fine of up to \$300 for each such violation.

(b) Application for an alarm dealer's license shall be made to the Mayor on a form prescribed by the Mayor. The information provided by each applicant shall be under oath and shall include, but shall not be limited to, the following:

(1) The name, address, and telephone number of the applicant;

(2) The name, address, and telephone number of the alarm business, the type of business organization, and the names and addresses of the president, vice-president, secretary, treasurer, manager, or other principal officer responsible for the operation of the business or local branch of the business, as applicable;

(3) That if the applicant plans to install, inspect, maintain, repair or service any alarm system, such applicant must comply with the provisions of § 6-3106(d).

(c) Each person whose name is required to be listed on the application shall furnish the Mayor with sets of his or her fingerprints, which shall become part of the application and shall be compared and recorded by the Chief of Police. The Chief of Police shall submit such fingerprints to the Federal Bureau of Investigation and to such other authorities as the Chief of Police may deem

advisable for comparison and record checking, and shall make such other investigation as the Chief of Police determines to be relevant. The Chief of Police shall cause such fingerprints to be returned to the Metropolitan Police Department upon completion and record checking by other agencies. The Chief of Police shall report the results of the investigation to the Mayor, who shall determine whether a license shall be issued.

(d) Each application required by this section shall be accompanied by a nonrefundable fee to be established by the Mayor; provided, that such fee shall, in the judgment of the Mayor, reimburse the District for the cost of services provided under this section. The term of the license shall be determined by the Mayor.

(e) An alarm dealer's license may be denied, suspended, or revoked upon any 1 or more of the following grounds:

(1) That the applicant made a false statement of a material fact in the application;

(2) That the applicant or licensee has violated any provision of this chapter, or any other applicable act or regulation governing such licenses; or

(3) That the applicant or licensee or other person specified in subsection (b) of this section has been convicted of a felony within the last 10 years, or of a misdemeanor involving unlawful entry or the unlawful taking of the property of another within the last 5 years, unless the Mayor determines that the issuance or continuance of a license would not constitute a significant risk to the community. The Mayor shall consider the following factors in determining whether a significant risk exists:

(A) The nature of the crime and its relationship to the duties and circumstances of participation in the business;

(B) information pertaining to the degree of rehabilitation of the convicted person; and

(C) the time elapsed since conviction.

(f) The Mayor may refuse to license, or may suspend or revoke any license in accordance with the provisions of this chapter, by notifying the applicant or licensee in writing and setting forth reasons authorized by subsection (e) of this section for such suspension or revocation. The Mayor may order a suspension for a period not to exceed 6 months. Any person whose license has been revoked may not apply for reissuance until 6 months after the date of revocation. Reissuance shall be subject to payment of the same fee required for obtaining an original license.

(g) Whenever the Mayor proposes to deny, suspend, or revoke a license, he shall serve upon the applicant or licensee written notice which shall:

(1) State the nature of the proposed action;

(2) Set forth facts which constitute the basis for the proposed action;

(3) Advise the applicant or licensee that he has the opportunity to submit information, within 10 days of service of the notice of proposed action, bearing on such proposed action for consideration by the Mayor;

(4) Advise the applicant or licensee that unless information is submitted pursuant to this section, the notice of proposed action shall constitute the notice of final action 10 days after service of such notice.

(h) In conjunction with the authority granted by this section, the Mayor shall have the authority to enter into agreements of assurance of compliance or discontinuance prior, or as an alternative, to denial, suspension, or revocation of license.

(i) Prior to any final action by the Mayor to suspend or revoke a license pursuant to this section, the license shall remain effective until its normal expiration date.

(j) Any person upon whom a notice of final action has been served may file with the Board of Appeals and Review, established by Organization Order No. 112, dated August 11, 1955, a written demand for a hearing. Any such hearing shall be held in accordance with the provisions of Chapter 15 of Title 1 and the Rules of Procedure of the Board of Appeals and Review adopted May 17, 1974. (Sept. 26, 1980, D.C. Law 3-107, § 5, 27 DCR 3760; Mar. 29, 1988, D.C. Law 7-99, § 2(f), 35 DCR 1051.)

Section references. — This section is referred to in § 6-3105.

Legislative history of Law 7-99. — See note to § 6-3101.

Legislative history of Law 3-107. — See note to § 6-3101.

§ 6-3105. Licensing of alarm agents.

(a) No person shall act as an alarm agent within the boundaries of the District of Columbia without first obtaining a license to be known as an alarm agent's license. A person to whom an alarm dealer's license has been issued may obtain an alarm agent's license without payment of any additional license fee. Any person who violates this section shall pay a fine of not more than \$300. Alarm agents' licenses shall be issued in the form of an identification card.

(b) Application for an alarm agent's license shall be made to the Mayor on a form prescribed by the Mayor. The information provided by the applicant shall be under oath and shall include, but shall not be limited to the following:

(1) The name, address, and telephone number of the applicant;

(2) The name, address, and telephone number of the alarm business by whom the applicant will be employed; and

(3) A signed statement by the owner or manager of the particular alarm business indicating that employment has been offered to the applicant.

(c) Each applicant for an alarm agent's license shall furnish the Mayor with sets of his or her fingerprints, which shall be processed in the manner set forth in § 6-3104(c).

(d) Each application required by this section shall be accompanied by a nonrefundable fee to be established by the Mayor; Provided, that such fee shall, in the judgment of the Mayor, reimburse the District for the cost of services provided under this section. The term of the license shall be determined by the Mayor.

(e) Each alarm agent, and each alarm dealer whose duties include the installation, inspection, maintenance, servicing, or repair of alarm systems, shall carry on his or her person at all times while engaged in such duties a valid licensee identification card. Such identification card shall include the name of the alarm agent, a photograph of the alarm agent, and an identifica-

tion number. Such card shall be displayed upon request. Identification cards are not transferable, and must be surrendered to the Mayor upon termination of employment as an alarm agent or suspension or revocation of an alarm agent's license.

(f) Alarm agents' licenses shall be subject to denial, suspension, or revocation on the grounds set forth in § 6-3104(e). Procedures for the denial, suspension, or revocation of such a license shall be as set forth in § 6-3104(f), (g), (i), and (j). (Sept. 26, 1980, D.C. Law 3-107, § 6, 27 DCR 3760; Mar. 29, 1988, D.C. Law 7-99, § 2(g), 35 DCR 1051.)

Legislative history of Law 3-107. — See note to § 6-3101.

Legislative history of Law 7-99. — See note to § 6-3101.

§ 6-3106. Duties of alarm dealers.

(a) Alarm dealers shall maintain in a secure and confidential manner records of all sales, leases, rentals, or installations of alarm systems and of service calls for alarm systems. Such records shall include the name of the alarm user, the address of the premises at which the alarm system is located, the date of installation or service call, and such other information as the Mayor may require. Such records shall be maintained for a period of no less than 1 year, unless specific records are required to be maintained for a longer period by the Mayor.

(b)(1) Alarm dealers shall provide to users complete oral and written instructions and demonstrations in the proper care and use of any alarm or alarm system sold to or installed for a user.

(2) Warranties provided by alarm dealers to users shall be in writing. Alarm dealers shall also provide users with copies of written warranties by the manufacturer which are enforceable by the user.

(3) Alarm dealers shall inform alarm users that the use of alarms within the boundaries of the District of Columbia is governed by law.

(4) Upon the sale or installation of an alarm system, alarm dealers shall obtain from the alarm user a written acknowledgment that the requirements set forth in this subsection have been met. Such acknowledgment shall be signed by the user and maintained as part of the records required to be kept by subsection (a) of this section.

(c) Alarm dealers who contract with a user to respond to the scene of an alarm activation shall post on the premises, in a conspicuous place visible from outside the premises, a sticker or other sign indicating the name and telephone number of the alarm dealer. When an alarm system has been activated the alarm dealer shall have an alarm agent present at the premises within 1 hour after being requested to do so by the Metropolitan Police Department or District of Columbia Fire Department, unless good cause is shown.

(d) Alarm dealers have an affirmative duty to adequately train and supervise alarm agents in their employ. Any alarm dealer which installs, inspects, maintains, repairs or services any alarm system must employ or otherwise engage the services of at least 1 person who possesses, at a minimum, a current master electrician limited license which is valid in the District. (Sept. 26, 1980,

D.C. Law 3-107, § 7, 27 DCR 3760; Mar. 29, 1988, D.C. Law 7-99, § 2(h), 35 DCR 1051.)

Section references. — This section is referred to in § 6-3104.

Legislative history of Law 7-99. — See note to § 6-3101.

Legislative history of Law 3-107. — See note to § 6-3101.

§ 6-3107. Duties of security alarm users.

(a) An alarm system user shall not cause or permit any false alarm.

(b) It shall be the responsibility of alarm users to instruct any employees or others who may have occasion to activate an alarm that alarm systems are to be activated only in emergency situations to summon an immediate police or fire department response. Alarm users shall also instruct appropriate employees as to the operation of the alarm system, to include setting, activation, and resetting of the alarm.

(c) Alarm users shall be responsible for seeing that alarm systems are maintained in good working order and that defects which could cause false alarms are promptly repaired.

(d) Users of alarm systems who have not contracted with an alarm dealer for an alarm agent to respond to the scene of alarm activations shall indicate the telephone numbers of at least 2 responsible persons who are capable of deactivating and resetting the alarm system and of assisting the police or fire department to secure the premises, if necessary, and who may be notified by the Metropolitan Police Department or District of Columbia Fire Department to respond to the scene by either: (1) Posting the names of such persons on a sticker or other sign on the premises in a conspicuous place visible from outside the premises; or (2) filing the names with the Mayor as defined by regulation. Such person or persons shall respond to the scene within one-half hour after being requested to do so by the Metropolitan Police Department or District of Columbia Fire Department, unless good cause is shown. (Sept. 26, 1980, D.C. Law 3-107, § 8, 27 DCR 3760; Mar. 29, 1988, D.C. Law 7-99, § 2(i), 35 DCR 1051.)

Legislative history of Law 3-107. — See note to § 6-3101.

Legislative history of Law 7-99. — See note to § 6-3101.

§ 6-3108. Standards for security and fire alarm systems.

(a) No person shall install or maintain an audible alarm system which creates a sound capable of being mistakenly identified as that of an emergency vehicle siren or a civil defense warning siren.

(b) The Mayor is authorized to deactivate any exterior audible alarm system which continues to emit a sound for more than one-half hour.

(c) No person shall install or maintain an alarm system which does not have some safeguard which allows reasonable delay to halt or recall an accidental alarm activation before the alarm is communicated to the Metropolitan Police Department or District of Columbia Fire Department for response to the scene.

(Sept. 26, 1980, D.C. Law 3-107, § 9, 27 DCR 3760; Mar. 29, 1988, D.C. Law 7-99, § 2(j), 35 DCR 1051.)

Legislative history of Law 3-107. — See note to § 6-3101.

Legislative history of Law 7-99. — See note to § 6-3101.

§ 6-3109. Exceptions.

(a) This chapter shall not apply to the use of alarm systems by law-enforcement personnel for law-enforcement purposes.

(b) This chapter shall not apply to alarm systems installed in motor vehicles, boats, or aircraft.

(c) This chapter shall not apply to alarm systems which do not communicate directly or indirectly with the Metropolitan Police Department or District of Columbia Fire Department to request a police or fire department response, but which are designed solely to alert personnel or others directly connected with or employed by the owner or operator of the protected premises or an agency who are required to respond to the scene of the activation prior to initiating a call for police or fire department services.

(d) This chapter shall not apply to persons engaged solely in the manufacture or sale of alarm systems or components thereof from a fixed location.

(e) This chapter shall not apply to telephone answering services which receive alarm activation signals and relay information to the Metropolitan Police Department or District of Columbia Fire Department, but do not function in any other manner as an agency or alarm dealer.

(f) This chapter shall not apply to electricians who may have occasion to deal with electrical components of alarm systems, but who are not alarm dealers or alarm agents, or acting in any such capacity.

(g) This chapter shall not apply to any alarm system used, operated, or installed in any premises or place owned, leased, occupied, or under the control of the governments of the United States or the District of Columbia, nor to any officer, agent, or employee of either government while acting or employed in his official capacity. (Sept. 26, 1980, D.C. Law 3-107, § 10, 27 DCR 3760; Mar. 29, 1988, D.C. Law 7-99, § 2(k), 35 DCR 1051.)

Legislative history of Law 3-107. — See note to § 6-3101.

Legislative history of Law 7-99. — See note to § 6-3101.

§ 6-3110. Inspections.

The Mayor is authorized to inspect the facilities of any alarm dealer, central alarm station, or commercial user or subscriber during reasonable business hours to determine whether the requirements of this chapter are being met. Information obtained pursuant to such inspections shall be kept confidential and used only in conjunction with the enforcement of this chapter or for other authorized purposes. (Sept. 26, 1980, D.C. Law 3-107, § 11, 27 DCR 3760; Mar. 29, 1988, D.C. Law 7-99, § 2(l), 35 DCR 1051.)

Legislative history of Law 3-107. — See note to § 6-3101.

Legislative history of Law 7-99. — See note to § 6-3101.

§ 6-3111. Penalties generally.

(a) Unless otherwise specified, any person who violates a provision of this chapter shall be fined no less than \$40 nor more than \$100.

(b) All fines levied pursuant to this chapter are civil in nature.

(c) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this chapter, or any rules or regulations issued under the authority of this chapter, pursuant to Chapter 27 of this title. Adjudication of any infraction of this chapter shall be pursuant to Chapter 27 of this title. (Sept. 26, 1980, D.C. Law 3-107, § 12, 27 DCR 3760; Mar. 29, 1988, D.C. Law 7-99, § 2(m), 35 DCR 1051; Mar. 8, 1991, D.C. Law 8-237, § 18, 38 DCR 314.)

Legislative history of Law 3-107. — See note to § 6-3101.

Legislative history of Law 7-99. — See note to § 6-3101.

Legislative history of Law 8-237. — Law 8-237, the “Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985 Technical and Clarifying Amendments Act of 1990,” was introduced in Council and assigned

Bill No. 8-203, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 4, 1990, and December 18, 1990, respectively. Signed by the Mayor on December 27, 1990, it was assigned Act No. 8-320 and transmitted to both Houses of Congress for its review.

§ 6-3112. Notice of violation.

(a) The Mayor may issue a notice of violation to any person who violates a provision of this chapter.

(b) A notice of violation shall:

(1) State the nature of the violation; and

(2) Describe the procedures provided in this section and § 6-3113.

(c) A notice of violation shall be the summons and complaint for purposes of this chapter. A duplicate of the notice of violation shall be served personally on the person to whom it is issued as provided in subsection (d) of this section. The original or a facsimile thereof shall be filed with the Office of the Corporation Counsel and shall be deemed a record kept in the ordinary course of business and shall be prima facie evidence of the facts contained therein.

(d) A notice of violation shall be served personally upon the alleged violator. If the alleged violator is not present the notice of violation shall be served by affixing such notice to the place of business (in the case of an alarm dealer or agent) or to the scene (in the case of an alarm user) in a conspicuous place.

(e) A person shall answer a notice of violation within 15 days by:

(1) Depositing and forfeiting collateral in an amount established by rule or order of the Mayor; or

(2) Depositing collateral in an amount established by rule or order of the Mayor and requesting the Superior Court of the District of Columbia to set a trial date.

(f) The Mayor shall prescribe the form for the notice of violation. A Mayor’s rule or order establishing the amount of collateral shall become effective at

expiration of 30 days unless the Council of the District of Columbia shall, during such period, adopt a resolution disapproving such Mayor's rule or order. (Sept. 26, 1980, D.C. Law 3-107, § 13, 27 DCR 3760; Mar. 29, 1988, D.C. Law 7-99, § 2(n), 35 DCR 1051; May 10, 1989, D.C. Law 7-231, § 22, 36 DCR 492.)

Section references. — This section is referred to in § 6-3113, 6-3114, and 6-3115.

Legislative history of Law 3-107. — See note to § 6-3101.

Legislative history of Law 7-99. — See note to § 6-3101.

Legislative history of Law 7-231. — Law 7-231, the "Technical Amendments Act of 1988,"

was introduced in Council and assigned Bill No. 7-586, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 29, 1988 and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-285 and transmitted to both Houses of Congress for its review.

§ 6-3113. Trial.

(a) Unless otherwise provided, the conduct of any civil trial commenced pursuant to § 6-3112 shall be governed by the Rules of the Superior Court of the District of Columbia.

(b) In such trial, the complaint of a violation of this chapter shall be brought in the name of the District of Columbia by the Corporation Counsel. The burden of proof shall be upon the District of Columbia and no violation of this chapter may be established except upon proof by a preponderance of the evidence. (Sept. 26, 1980, D.C. Law 3-107, § 14, 27 DCR 3760.)

Section references. — This section is referred to in § 6-3112.

Legislative history of Law 3-107. — See note to § 6-3101.

§ 6-3114. Collection of fines and fees.

(a) All fines, collateral and fees collected pursuant to this chapter shall be paid into the General Fund of the District of Columbia.

(b) A fine or collateral is due and payable under this chapter upon default or a finding at trial in favor of the District or upon the failure of a person to answer a notice of violation within 15 days as provided in § 6-3112(e).

(c) Failure of a person to pay a fine or collateral when due shall cause such fine or collateral to be due and payable in twice the original amount not to exceed \$300.

(d) The District of Columbia shall have a lien upon any amount due and payable as a fine or collateral pursuant to this chapter. However, no such lien shall be effective unless: (1) The District shall have filed in the Office of the Recorder of Deeds of the District of Columbia, in a docket provided for such liens, a written statement containing the name and address of the violator and the date and approximate place of the violation; and (2) the District shall have given notice of the filing of such lien to the violator. Thereafter, the District is authorized to file suit in the amount of its lien. (Sept. 26, 1980, D.C. Law 3-107, § 15, 27 DCR 3760.)

Legislative history of Law 3-107. — See note to § 6-3101.

§ 6-3115. Miscellaneous provisions.

(a) In accordance with Chapter 15 of Title 1, the Mayor shall issue such rules and procedures as are necessary to implement this chapter. Except as provided by the Mayor, the Metropolitan Police Department and District of Columbia Fire Department shall be responsible for the enforcement of this chapter and the issuance of any notice of violation pursuant to § 6-3112.

(b) If any portion of this chapter is for any reason held invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining provisions. (Sept. 26, 1980, D.C. Law 3-107, § 16, 27 DCR 3760; Mar. 29, 1988, D.C. Law 7-99, § 2(o), 35 DCR 1051.)

Legislative history of Law 3-107. — See note to § 6-3101.

Legislative history of Law 7-99. — See note to § 6-3101.

CHAPTER 32. MULTI-MATERIAL RECYCLING SYSTEMS.

Sec.

6-3201. Definitions.

6-3202. Comprehensive plan for multi-material recycling system.

§ 6-3201. Definitions.

For purposes of this chapter, the term:

(1) "Discarded material" means a wide variety of materials including liquids in containers that are considered garbage and rejected as being spent, useless, worthless, or in excess. The term "discarded material" does not include household hazardous waste or solid waste found in sewage and water resource systems or those waste products emitted from smoke stacks.

(2) "Household" includes single and multiple residences, hotels, motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas.

(3) "Household hazardous waste" means any material deriving from households that may be toxic, flammable, corrosive, explosive, or chemically active and, if not properly stored or disposed of, may cause or significantly contribute to serious illness or death or may pose a substantial threat to human health or the environment. The term "household hazardous waste" includes garbage and waste in septic tanks, pesticides, solvents, degreasers, fertilizers, unused flammables such as gasoline and kerosene, and swimming pool chemicals. The term "household hazardous waste" does not apply to a household generating more than 50 kilograms of hazardous waste per month.

(4) "Multi-material" means:

(A) Reusable organic compounds;

(B) All types of consumer products that have fulfilled their useful function and usually cannot be used further in their present form or at their present location; and

(C) Products that result in waste from the manufacture or conversion of products.

(5) "Organic compounds" means material made from substances composed of chemical compounds of carbon and generally manufactured in the life processes of plants and animals. The term "organic compounds" includes paper, wood, mulch, and yard and food wastes capable of being reused for household purposes.

(6) "Recycling program" means a resource recovery method that involves the collection and treatment of waste products for use as raw materials in manufacturing the same or a similar product.

(7) "Resource recovery" means the recovery of materials or energy from solid waste.

(8) "Resource recovery facility" means any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

(9) "Separation" means the segregation and collection of individual recyclable components before the materials become mixed into the process of solid waste disposal.

(10) "Solid waste" means garbage, refuse, and sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other waste products, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, government operations, and from community activities. (July 25, 1987, D.C. Law 7-19, § 2, 34 DCR 3810.)

Legislative history of Law 7-19. — Law 7-19, the "District of Columbia Comprehensive Plan for a Multi-Material Recycling System Act of 1987," was introduced in Council and assigned Bill No. 7-62, which was referred to the Committee on Public Works. The Bill was

adopted on first and second readings on May 5, 1987 and May 19, 1987, respectively. Signed by the Mayor on June 1, 1987, it was assigned Act No. 7-33 and transmitted to both Houses of Congress for its review.

§ 6-3202. Comprehensive plan for multi-material recycling system.

(a) Within 1 year from July 25, 1987, the Mayor of the District of Columbia ("Mayor") shall submit to the Council of the District of Columbia ("Council") a comprehensive plan for a District of Columbia ("District") multi-material recycling system for the purpose of recovering energy and other resources from discarded materials and solid waste and for distributing reusable organic compounds for public use.

(b) Before submitting the comprehensive plan to the Council, the Mayor shall:

(1) Hold a public hearing to receive public comments on the proposed comprehensive plan; and

(2) Consult with the Council, the Litter and Solid Waste Reduction Commission established pursuant to § 2-3201, the Hazardous Materials Study Commission established pursuant to § 6-3001, and other interested parties.

(c) The comprehensive plan submitted to the Council by the Mayor shall include:

(1) A technical and economic description of the level of performance and results that can be attained from an effective multi-material recycling program and solid waste resource recovery facility;

(2) Detailed methods for the collection, transportation, separation, and reduction of discarded materials, household hazardous waste, and solid waste;

(3) Guidelines for the implementation of an office waste paper recycling program for District government office buildings, District-based educational facilities, and private corporations;

(4) Information regarding the alternative management of garbage disposal and resource recovery;

(5) Information regarding an adequate location, design, and construction site for a facility associated with the conversion of solid waste to energy;

(6) Information regarding regional, geographic, demographic, and environmental factors;

(7) Information regarding public health and safety considerations and applicable federal regulations;

(8) Guidelines for the distribution of reusable organic compounds, such as mulch, at convenient distribution centers throughout the District for use by its residents for gardening, landscaping, and other similar purposes; and

(9) A description of a public information campaign and community outreach program to be targeted to District residents and visitors regarding the importance of the District's multi-material recycling system and the public's role in this system. (July 25, 1987, D.C. Law 7-19, § 3, 34 DCR 3810.)

Legislative history of Law 7-19. — See note to § 6-3201.

referred to in (b)(2), was repealed by § 7 of D.C. Law 7-190, effective March 16, 1989.

References in text. — "Section 6-3001,"

CHAPTER 33. HAZARDOUS MATERIALS TRANSPORTATION.

Sec.

6-3301. Findings and purposes.

6-3302. Definition.

6-3303. Hazardous Materials Transportation Program.

6-3303.1. Stops and inspection.

Sec.

6-3303.2. Consent to inspection.

6-3304. Penalties.

6-3304.1. Reimbursements.

6-3305. Rules.

§ 6-3301. Findings and purposes.

The Council of the District of Columbia makes the following findings and supports the following purposes:

(1) Many shipments of hazardous materials are made in the District of Columbia ("District");

(2) The District is 1 of the few states that has not adopted the federal regulations governing the transportation of hazardous materials and motor carrier safety;

(3) According to statistics compiled by the federal Environmental Protection Agency, there have been 30 incidents involving the unintentional release of hazardous materials in transport in the District since 1985, none of which have been required by law to be reported to the District government;

(4) There have been a growing number of incidents involving the transportation of hazardous materials on highways surrounding the District in recent months;

(5) According to the United States Department of Transportation, there is an insufficient number of federal inspectors available to inspect vehicles transporting hazardous materials, causing many vehicles to go uninspected unless the states have regulations enabling them to carry out inspections;

(6) The District does not have a procedure for inspecting the safety of commercial motor vehicles that transport hazardous materials in the city, nor for monitoring the condition of the operators of those vehicles;

(7) Until the District adopts a system consistent with the federal motor carrier safety regulations that govern commercial motor vehicles, including those transporting hazardous materials, the District is ineligible to receive at least \$225,000 per year in federal grant assistance for implementing the regulations;

(8) Other costs to the District associated with enforcing this chapter should be the responsibility of those who transport hazardous materials in the District;

(9) The Hazardous Materials Study Commission will no longer be necessary since the Commission's mandate will be executed through the implementation of this chapter; and

(10) Residents of and visitors to the District should be protected from the serious risks associated with improper transportation of hazardous materials, overworked operators, and unsuitable maintenance of commercial motor vehicles, including vehicles transporting hazardous materials. (Mar. 16, 1989, D.C. Law 7-190, § 2, 35 DCR 8663.)

Legislative history of Law 7-190. — Law 7-190, the “District of Columbia Hazardous Materials Transportation and Motor Carrier Safety Act of 1988,” was introduced in Council and assigned Bill No. 7-20, which was referred to the Committee on Public Works. The Bill was

adopted on first and second readings on October 25, 1988 and November 15, 1988, respectively. Signed by the Mayor on December 1, 1988, it was assigned Act No. 7-252 and transmitted to both Houses of Congress for its review.

§ 6-3302. Definition.

For the purposes of this chapter, the term “hazardous materials” means substances or materials in a quantity and form that may pose an unreasonable risk to health, safety, or property when transported in commerce and includes explosives, radioactive materials, etiological agents, flammable liquids or solids, combustible liquids or solids, poisons, oxidizing or corrosive materials, or compressed gases. (Mar. 16, 1989, D.C. Law 7-190, § 3, 35 DCR 8663.)

Legislative history of Law 7-190. — See note to § 6-3301.

§ 6-3303. Hazardous Materials Transportation Program.

The Mayor shall establish a Hazardous Materials Transportation Program that shall include at a minimum:

(1) A description of the criteria for determining what materials constitute hazardous materials that is consistent with the federal hazardous materials transportation regulations of the United States Department of Transportation;

(2) The identification of the types and quantities of hazardous materials transported in the District;

(3) The identification of the carriers and shippers of the hazardous materials;

(4) A designation of primary and alternate routes for the transportation of hazardous materials in the District consistent with the federal hazardous materials transportation regulations and the federal motor carrier safety regulations of the United States Department of Transportation and taking into consideration factors that will ensure the highest degree of safety to individuals and property, including the following:

(A) Population density along the primary and alternate routes;

(B) Traffic and street conditions, including dimensions of streets and alleys;

(C) The ability to evacuate individuals in the vicinity of the primary and alternate routes should evacuation become necessary;

(D) The type and quantity of hazardous materials being transported;

(E) Whether the hazardous materials are route-controlled quantities of radioactive materials consistent with the federal hazardous materials transportation regulations; and

(F) Consistency, to the extent practicable, with the laws and regulations of adjacent states and local jurisdictions likely to be affected by the route selections;

(5) A system governing the transportation, packaging, labelling, and placarding of hazardous materials transported in the District consistent with the federal hazardous materials transportation regulations;

(6) A system to ensure motor carrier safety consistent with the federal motor carrier safety regulations that will qualify the District for federal grant assistance to implement this chapter;

(7) The inspection of commercial motor vehicles, including vehicles that transport hazardous materials in the District consistent with the federal hazardous materials transportation regulations and federal motor safety carrier regulations;

(8) Repealed. (Mar. 16, 1989, D.C. Law 7-190, § 4, 35 DCR 8663; Oct. 1, 1992, D.C. Law 9-173, § 3(a), 39 DCR 5834.)

Effect of amendments. — D.C. Law 9-173 repealed (8).

Legislative history of Law 7-190. — See note to § 6-3301.

Legislative history of Law 9-173. — See note to § 6-3303.1.

§ 6-3303.1. Stops and inspection.

To determine compliance with this chapter and its implementing regulations, a police officer may stop the driver of a motor vehicle and enter upon the premises of a motor carrier that is regulated pursuant to this chapter and inspect any of the following:

(1) All equipment, parts, and accessories, including carrier maintenance, certification, and safety records;

(2) All driver records, including driver's license, permits, hours of service records, certificate of physical examination, and training records;

(3) All manifests, including bills of lading or other shipping documents; and

(4) All cargo and cargo areas, including the removal of cargo seals when necessary to conduct a safety inspection. (Mar. 16, 1989, D.C. Law 7-190, § 4(a), as added Oct. 1, 1992, D.C. Law 9-173, § 3(b), 39 DCR 5834.)

Section references. — This section is referred to in § 6-3303.2.

Effect of amendments. — D.C. Law 9-173 added this section.

Legislative history of Law 9-173. — Law 9-173, the "Traffic Adjudication and Motor Carrier Safety Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-501,

which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on June 23, 1992, and July 7, 1992, respectively. Signed by the Mayor on July 23, 1992, it was assigned Act No. 9-271 and transmitted to both Houses of Congress for its review. D.C. Law 9-173 became effective on October 1, 1992.

§ 6-3303.2. Consent to inspection.

(a) The operation of a vehicle subject to this chapter and its implementing regulations on any highway or roadway in the District shall constitute the consent of the driver and the owner of the vehicle to the inspection pursuant to § 6-3303.1.

(b) The driver of a vehicle shall obey every sign and every direction of a police officer to stop the vehicle and submit to an inspection. (Mar. 16, 1989, D.C. Law 7-190, § 4(b), as added Oct. 1, 1992, D.C. Law 9-173, § 3(b), 39 DCR 5834.)

Effect of amendments. — D.C. Law 9-173 added this section.

Legislative history of Law 9-173. — See note to § 6-3303.1.

§ 6-3304. Penalties.

(a) Violations of this chapter or any rule promulgated pursuant to § 6-3305 shall be adjudicated as provided by Chapter 6 of Title 40.

(b) The Mayor, by rule, may establish civil fines and penalties for violations of this chapter or any rule promulgated pursuant to § 6-3305.

(c)(1) As an alternative sanction, any person who knowingly or willfully violates this chapter, or any rule promulgated pursuant to § 6-3305 shall be subject to a fine of not less than \$100 and not more than \$10,000, imprisonment not to exceed 1 year for each violation, or both. Each day shall constitute a separate violation and the penalties prescribed shall be applicable to each violation.

(2) Prosecution for violations of this subsection shall be brought by the Corporation Counsel. (Mar. 16, 1989, D.C. Law 7-190, § 5, 35 DCR 8663; Oct. 1, 1992, D.C. Law 9-173, § 3(c), 39 DCR 5834.)

Effect of amendments. — D.C. Law 9-173 rewrote this section.

Legislative history of Law 9-173. — See note to § 6-3303.1.

Legislative history of Law 7-190. — See note to § 6-3301.

§ 6-3304.1. Reimbursements.

(a) The owner of any hazardous material motor carrier that releases a hazardous material shall reimburse the District for all expenditures made by the District to contain, remove, or respond to such a release.

(b) The Mayor shall notify by certified mail the owner of any hazardous material motor carrier that releases a hazardous material of the costs incurred by the District to contain, remove, or respond to the release.

(c) If the owner of the hazardous material motor carrier does not reimburse the District for all expenditures made to contain, remove, or respond to the release, within 10 days of the posting of notice by the Mayor, the Corporation Counsel may bring a civil action to seek reimbursement from the owner of the motor carrier. (Mar. 16, 1989, D.C. Law 7-190, § 5(a), as added Oct. 1, 1992, D.C. Law 9-173, § 3(d), 39 DCR 5834.)

Effect of amendments. — D.C. Law 9-173 added this section.

Legislative history of Law 9-173. — See note to § 6-3303.1.

§ 6-3305. Rules.

Within 6 months of March 16, 1989, the Mayor shall, pursuant to subchapter I of Chapter 15 of Title 1, issue rules to implement the provisions of this chapter. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the

proposed rules shall be deemed approved. (Mar. 16, 1989, D.C. Law 7-190, § 6, 35 DCR 8663.)

Section references. — This section is referred to in § 6-3304.

Legislative history of Law 7-190. — See note to § 6-3301.

Delegation of Authority Under D.C. Law

7-190, the “D.C. Hazardous Materials Transportation & Motor Carrier Safety Act of 1988”. — See Mayor’s Order 89-169, July 25, 1989.

CHAPTER 34. SOLID WASTE MANAGEMENT AND MULTI-MATERIAL RECYCLING.

Sec.	Sec.
6-3401. Council findings.	6-3414. Annual reporting requirements; submission of plan.
6-3402. Purposes.	6-3415. Recycling surcharge.
6-3403. Definitions.	6-3416. Information clearinghouse.
6-3404. Solid waste management policy for the District.	6-3417. Enforcement.
6-3405. Priority for recycling.	6-3418. Rules.
6-3406. Recyclable materials recovery targets.	6-3419. Minimum recycled content percentage requirements.
6-3407. Mandatory source separation program.	6-3420. Minimum recycled content reporting requirements.
6-3408. Establishment of Office of Recycling.	6-3421. Application for exemption and hearing procedure.
6-3409. Right to recycle individual solid waste not limited.	6-3422. Minimum recycled content surcharge.
6-3410. Multi-material recycling buy-back centers and intermediate processing facilities.	6-3422.1. Establishment of a Recycled Newspaper Fiber Content Advisory Task Force.
6-3411. Contracting authority.	6-3423. Minimum recycled content rules.
6-3412. Compost materials use requirements.	
6-3413. District procurement policies.	

§ 6-3401. Council findings.

The Council of the District of Columbia ("Council") finds that:

(1) The District of Columbia ("District") disposes of its solid waste by incineration at the Benning Road Solid Waste Reduction Center #1 ("SWRC #1") or burying it at the Lorton Landfill, located on Interstate 95.

(2) Approximately 2,000 tons of solid waste from the District is buried in the Lorton Landfill each day and approximately 700 tons are burned at SWRC #1 each day.

(3) The increasing volume and variety of solid waste generated in the District create conditions that threaten the public health, safety, and well-being by contributing to land pollution, a waste of resources, the production of flies, rodents, litter, and the general deterioration of the environment.

(4) The traditional methods of solid waste management for the District, which are directed largely at land disposal and incineration, may not meet the future demands of the growing amount of municipal solid waste and the increase in non-biodegradable materials contained in solid waste.

(5) Methods of solid waste management that emphasize source reduction and recycling are essential to the long-range preservation of the health, safety, and well-being of the public, the economic productivity and environmental quality of the District, and the conservation of resources.

(6) Removing certain materials from the District solid waste stream will decrease the flow of solid waste to the Lorton Landfill, aid in the conservation of valuable resources, and reduce substantially the required capacity of proposed solid waste disposal facilities.

(7) There is no office, division, or personnel, within the District government, devoted specifically to the issues attendant to recycling.

(8) The Council can most appropriately demonstrate its long-term commitment to environmental protection and effective solid waste management by

establishing a proper solid waste separation and recycling program and increasing the purchase of recycled products by agencies and instrumentalities of the District government.

(9) Many other jurisdictions, including Fairfax County, Virginia; Montgomery County, Maryland; and many states, including New Jersey, California, and Washington, include recycling as part of their solid waste stream management.

(10) Private group recycling efforts within the District should be encouraged and coordinated with the efforts of the District government.

(11) Efforts should be made by the District government to explore the feasibility of establishing joint recycling programs with neighboring jurisdictions. (Mar. 16, 1989, D.C. Law 7-226, § 2, 36 DCR 595.)

Temporary addition of chapter. — Sections 2-11 of D.C. Law 10-251 enacted a Chapter 34A of Title 6 consisting of §§ 6-3430 through 6-3439 to read as follows:

“§ 6-3430. Definitions.

For the purposes of this chapter, the term:

(1) “Composting facility” means any location or structure which uses a microbial process to convert organic material, including either wood, paper, mulch, yard or food waste, into a soil amendment.

(2) “Existing solid waste facility” means a solid waste facility in construction, including site preparation, or operation on the effective date of this act.

(3) “Final disposal” means depositing or placing solid waste for its final location.

(4) “Open solid waste facility” means any public or privately owned or operated solid waste disposal or solid waste handling facility where solid waste is stored or processed outside of a fully enclosed building or structure.

(5) “Person” means any individual, partnership, corporation, trust, association, firm, joint stock company, organization, commission, District of Columbia and federal governments, or any other entity.

(6) “Recyclable material” means material which would otherwise become municipal solid waste, and that may be collected, separated or processed, and returned to the economic mainstream as a raw material or product.

(7) “Recycling facility” means a facility which receives source separated recyclable material for separation, storage, conversion, baling or processing prior to marketing for reuse, including a drop-off or buy-back facility, which produces no more than an average monthly 15% residue.

(8) “Residue” means the solid waste, as measured by weight, requiring disposal after recyclable material is removed during or after processing.

(9) “Solid waste” means garbage, refuse or any other waste product, including solid, semi-

solid or liquid material resulting from commercial, industrial, or governmental operation or residential or community activity, but not including sludge resulting from a wastewater treatment process, or hazardous waste as that term is defined in § 6-702.

(10) “Solid waste disposal facility” means any facility where solid waste is discharged, deposited, tipped, dumped or placed for final disposal, including incinerators, waste-to-energy facilities, rubble fills and landfills.

(11) “Solid waste facility” means any public or privately owned or operated solid waste disposal facility or solid waste handling facility.

(12) “Solid waste handling facility” means any facility where solid waste temporarily is deposited, or placed for processing, at any time prior to its final disposal at a solid waste disposal facility.

(13) “Solid waste transfer station” means a facility where solid waste is deposited prior to loading the solid waste into vehicles for transport to a solid waste disposal facility.

(14) “Source separated” means the end result when recyclable material is separated from solid waste at its point of origin for separate collection and processing.

(15) “Substantially alter” means to make any physical modification to a solid waste facility which increases or decreases the facility’s maximum annual capacity, as indicated in the facility’s solid waste facility permit, by more than 10% per year, or in any way alters or modifies the method by which the waste is processed or disposed or which increases the amount of any air pollutant emitted or which results in an emission of any air pollutant not previously emitted.

§ 6-3431. Open facilities prohibited.

It is unlawful to operate an open solid waste facility in the District of Columbia.

§ 6-3432. Permits required.

(a) It is unlawful to construct or operate a solid waste facility in the District of Columbia except in accordance with a solid waste facility permit issued for that facility by the Mayor.

(b)(1) An existing solid waste facility shall cease construction, including site preparation, or operation 60 days after December 28, 1994, unless the Mayor has issued an interim operating permit for the facility pursuant to paragraph (2) of this subsection.

(2) The Mayor may issue an interim operating permit with terms and conditions of operation to an existing solid waste facility if the Mayor has received a completed solid waste facility permit application for that facility within 60 days of December 28, 1994, and the payment of an initial permit fee of \$15,000.

(3) An interim operating permit shall be valid until such time as a final disposition of the solid waste facility permit application has been made by the Mayor unless the final disposition of the application has not been made because of the failure of the applicant to furnish information reasonably required or requested in order to process the application.

(4) In addition to any other remedies available at law or equity, the Mayor may immediately suspend or revoke an interim operating permit, and order closure of the facility if the Mayor finds that the facility is operating in violation of:

(A) Its interim operating permit; or

(B) Health, safety, environmental, and zoning laws, rules and regulations, including such rules and regulations as may be issued by the Mayor pertaining to solid waste facilities operating under interim operating permits; or

(C) If the facility is endangering human health, the public welfare, or the environment; or

(D) Failure of the applicant to furnish information reasonably required or requested in order to process the application.

(c) A solid waste facility shall not be substantially altered unless the Mayor has given prior approval to the alteration by issuing to the facility a modification of the facility's existing permit and payment of the modification application fee by the applicant.

(d) An existing solid waste facility while operating under an interim operating permit shall not be substantially altered except as expressly authorized by the Mayor.

(e) The Mayor may, in accordance with standards to be established by regulation, issue, renew, suspend, revoke, or deny a solid waste facility permit, and determine, vary or modify its terms and conditions. No solid waste facility permit shall be issued or renewed until the Mayor has determined that the proposed facility is operating or will operate in full compliance with environmental, health, safety, and zoning laws, rules, and regulations and that the proposed facility will not endanger human health, the public welfare, or the environment. A contrary determination shall allow the Mayor to order closure of an existing facility.

(f) Permits issued under subsection (e) of this section shall be valid for a period not to exceed 3 years from the date of issuance.

(g) Each permit issued under this section shall be limited to one site and one person and shall not be transferable to another site, facility or person.

(h) No permit shall be required under this section for:

(1) Recycling or composting facilities;

(2) Any existing facility which receives and processes construction and demolition material exclusively, pursuant to a valid certificate of occupancy obtained not less than 1 year immediately preceding the effective date of this act;

(3) Treatment, storage, or disposal facilities that have been issued a permit pursuant to Chapter 7 of this title;

(4) Solid waste facilities owned and operated by, or on behalf of, the District of Columbia;

(5) The temporary storage of sand, salt, milled asphalt, dirt, street sweepings, or other non-putrescible material resulting from a municipal operation; or

(6) The temporary storage of dirt, construction material or demolition material generated on site in conformance with a permit issued by the Department of Consumer and Regulatory Affairs.

(i) Nothing in this act shall relieve any person of the obligation to construct and operate a solid waste facility in full compliance with any applicable laws, rules or regulations, including those pertaining to nuisances, health, safety, environment, property values, and zoning.

§ 6-3433. Application for permits.

(a) Applications for solid waste facility permits and permit modifications, shall be submitted to the Mayor in the form prescribed by regulation and shall include all information as the Mayor may reasonably require.

(b) The application fees for solid waste facilities shall be as follows:

(1) Initial permit — \$15,000;

(2) Renewal permit — \$12,000; and

(3) Modification permit for substantial alterations — \$2,000.

(c) The payment under subsection (b)(1) of this section shall be waived if already paid pursuant to section 4(b)(2).

(d) The Mayor may by rulemaking revise the application fees as necessary to recover the administrative costs associated with the review of applications for solid waste facility permits and interim operating permits, the review of annual reports, the inspection of facilities and all other activities associated with the administration and enforcement of this act. Subject to the enactment of appropriations, solid waste facility application fees shall be used to offset the cost of reviewing and processing solid waste facility applications, and monitoring facility compliance with the requirements of this act

and the terms and conditions of the solid waste facility permit.

§ 6-3434. Reporting requirements.

Owners and operators of solid waste facilities subject to the provisions of this act shall submit periodic reports to the Mayor at the times specified by regulation. The reports shall contain all information as the Mayor considers reasonably necessary to determine compliance with this act including origin of solid waste, the quantity and type of District and non-District solid waste received, separated and marketed, or transferred and sent to solid waste facilities, wherever located. Records necessary to comply with this reporting requirement shall be maintained in a central location at solid waste facilities for such period of time as the Mayor may prescribe. Failure to submit periodic reports or maintain records may result in the imposition of a \$25,000 fine, suspension or revocation of a solid waste facility permit, or both.

§ 6-3435. Inspections.

The Mayor shall have the right to randomly and periodically inspect solid waste facilities located in the District of Columbia, and all records, documents, or data compilations contained therein, for the purpose of ensuring compliance with this act. Inspections shall take place while the facility is in operation.

§ 6-3436. Annual facility charge.

(a) In addition to the solid waste facility permit fee, the Mayor shall collect an annual solid waste facility charge from owners and operators of solid waste facilities. The charge shall be based upon the facility's maximum annual capacity, as indicated in the facility's interim operating permit or solid waste facility permit.

(b) The charge shall be determined by multiplying the facility's maximum annual capacity, as determined by the Mayor, and as indicated in the permit, by \$10 per ton. The initial payment shall be due on the effective date of a facility's interim or permanent permit, whichever is issued first. The annual facility charge shall be paid in 2 equal payments on June 30 and on December 30 of each year. The initial payment shall be prorated for the period between the permit issuance date and the next payment date.

(c) The Mayor may revise the solid waste facility charge as necessary to offset the cost of developing new and additional methods of solid waste management and to fund the recycling activities of the District.

(d) Failure to pay the solid waste facility charge within 10 calendar days of the due date shall result in the immediate suspension of the solid waste facility operating permit and closure of the facility until all charges due the District are paid in full, including payment of a

penalty equal to 1% per month of the unpaid balance.

(e) Subject to the enactment of appropriations, revenues collected from the payment of the solid waste facility charge shall be used to fund recycling activities in accordance with § 6-3415.

§ 6-3437. Rulemaking.

(a) The Mayor is authorized, in accordance with subtitle I of Chapter 15 of Title 1, to adopt rules and regulations to implement the provisions of this act, including the establishment of:

(1) Solid waste facility permit requirements that include siting, construction, safety, environmental and operating performance standards for solid waste facilities;

(2) Permit terms and conditions;

(3) A schedule of fines for violations of this act, or the rules and regulations issued under its authority;

(4) Financial and other applicant disclosure forms;

(5) Bonding requirements, or other forms of commercial insurance, or such other mechanisms as the Mayor may deem appropriate.

(6) Procedures to ensure the prompt and safe removal of solid waste from a solid waste facility which has permanently ceased operation; and

(7) Procedures to assure that the facility will not have a negative impact on an adjoining residential or commercial building or areas.

(b) The Mayor is further authorized to amend or repeal any provision of Chapter 3 of Title 8 of the District of Columbia Health Regulations, issued June 29, 1971 (Reg. 71-21; 21 DCMR § 700 et seq.), to conform the chapter with, or to further the purposes of this act.

§ 6-3438. Hearings.

Any person adversely affected by an action taken pursuant to the provisions of this act, or the rules and regulations issued under its authority, is entitled to a hearing before the Mayor upon filing with the Mayor, within 15 days of the date of such action, a written request for a hearing. Such hearing shall be held in accordance with § 1-1509.

§ 6-3439. Remedies.

(a)(1) Whenever the Mayor has reason to believe that (i) there has been a violation of this act or of the rules and regulations issued under its authority, or (ii) a threat exists to human health, the public welfare, or the environment as the result of the construction, modification, or operation of a solid waste facility located within the District of Columbia, the Mayor may give written notice of the alleged violation or threat to the person responsible and order the person to take such corrective measures as the Mayor determines reasonable and necessary.

(2) If a person fails to comply with the notice within the time period stated in the notice, the Mayor may take corrective actions necessary to

alleviate or terminate the violation or threat. The Mayor may assess a penalty against the person responsible equal to triple the costs of undertaking the corrective actions, or close the facility, or both.

(b) If the Mayor finds that any person is constructing or operating a solid waste facility in a manner which endangers human health, the public welfare, or the environment, or is operating a facility in violation of section 3 or section 4(b)(1), the Mayor may: (i) request the Corporation Counsel to commence appropriate civil action in the Superior Court of the District of Columbia to secure a temporary restraining order, a preliminary injunction, a permanent injunction, or other appropriate relief or (ii) issue a cease and desist order.

(c) The Mayor or any court may impose civil fines, penalties, costs and fees as alternate sanctions for violations of this act, or the rules and regulations issued under its authority, pursuant to Chapter 29 of this title. Adjudications of any infractions of this act shall be pursuant to Chapter 29 of this title. For any violation, each day of the violation shall constitute a separate offense and the penalties prescribed shall apply separately to each separate offense."

Section 16(b) of D.C. Law 10-251 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of

the Solid Waste Facility Permit Amendment Act of 1995, whichever occurs first.

Emergency act amendments. — For temporary addition of chapter, see §§ 2-11 of the Solid Waste Facility Permit Emergency Act of 1994 (D.C. Act 10-384, December 28, 1994, 42 DCR 45).

Legislative history of Law 7-226. — Law 7-226, the "District of Columbia Solid Waste Management and Multi-Material Recycling Act of 1988," was introduced in Council and assigned Bill No. 7-378, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on November 29, 1988 and December 13, 1988, respectively. Signed by the Mayor on January 10, 1989, it was assigned Act No. 7-301 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-251. — Law 10-251, the "Solid Waste Facility Permit Temporary Act of 1994," was introduced in Council and assigned Bill No. 10-835. The Bill was adopted on first and second readings on December 6, 1994, and January 3, 1995, respectively. Signed by the Mayor on January 18, 1995, it was assigned Act No. 10-398 and transmitted to both Houses of Congress for its review. D.C. Law 10-251 became effective on March 23, 1995.

§ 6-3402. Purposes.

In enacting this chapter, the Council supports the following purposes:

(1) To increase the life expectancy of the Interstate 95 Landfill and decrease the need for future expansion of alternative refuse disposal facilities through a comprehensive program of solid waste stream reduction.

(2) To develop alternative methods of recovering resources from solid waste, recommend uses for the recovered resources, and determine the impact of the distribution of the resources in existing markets.

(3) To identify methods of collection, reduction, and separation that will promote more efficient use of solid waste disposal facilities and contribute to more effective programs for the reuse of solid waste.

(4) To employ District government procurement procedures to develop market demand for recovered resources, with special emphasis on maximum District government use of recycled paper.

(5) To encourage public agencies, private organizations, and individuals to participate in the reclamation and recycling of resources from solid wastes.

(6) To promote policies of energy conservation, environmental protection, economic productivity, and cost-effectiveness in the District. (Mar. 16, 1989, D.C. Law 7-226, § 3, 36 DCR 595.)

Section references. — This section is referred to in § 6-3404.

Legislative history of Law 7-226. — See note to § 6-3401.

§ 6-3403. Definitions.

For the purposes of this chapter, the term:

(1) "Commercial solid waste stream" means that part of the solid waste stream that is not collected by the District government.

(2) "Commercial property" means any property that does not receive solid waste collection services from the District government.

(3) "Compost" means the substance produced through the decomposition of organic materials, including wood, paper, mulch, yard, and food waste, that is capable of being used as a soil amendment.

(4) "Composting" means the decomposition of organic materials to form compost.

(5) "Construction and demolition wastes" means the waste building materials and rubble resulting from construction, remodeling, repair, and demolition operation on houses, commercial buildings, pavements, and other structures.

(6) "Disposition" means the transport, placement, reuse, sale, donation, transfer, or temporary storage, for a period not exceeding 6 months, of recyclable materials for all possible uses except disposal as solid waste.

(7) "Intermediate processing facility" means a facility where commingled solid waste can be separated, processed, stored, assembled, and prepared for sale or other disposition, except incineration or burial.

(8) "Market" means the disposition of recyclable materials that are source separated in the District and exchanged for fair market value.

(9) "Multi-material recycling buy-back center" means any publicly or privately operated facility that pays the public for recyclable materials.

(10) "Office building" means any commercial property where the primary functions are the transaction of administrative, business, civic, or professional services including any library, museum, university, or other facility where handling goods, wares, or merchandise, in limited quantities, is accessory to the primary occupancy or use.

(11) "Paper" means all newspaper, high-grade office paper, fine paper, bond paper, offset paper, xerographic paper, memo paper, duplicator paper, continuous form paper, envelopes, printed material, or related cellulosic material containing not more than 10% by weight or volume of non-cellulosic material such as laminates, binders, coatings, or saturants.

(12) "Paper product" means any paper item or commodity, including paper napkins, towels, corrugated and other cardboard, construction material, toilet tissue, and related cellulosic products containing not more than 10% by weight or volume of non-cellulosic materials such as laminates, binders, coatings, or saturants.

(13) "Recycling" means a resource recovery method that involves the collection and treatment of waste material that can be reprocessed and returned to the economic mainstream as raw material or products.

(14) "Recyclable material" means material that would otherwise become municipal solid waste, and that may be collected, separated, or processed and returned to the economic mainstream as a raw material or product.

(15) "Recycled paper" means any paper the total weight of which is not less than 40% secondary waste paper material.

(16) "Recycled paper product" means any paper product consisting of not less than 40% secondary waste paper material.

(17) "Recycling service" means the service provided by a person engaged in the business of recycling, including the collection, processing, storage, purchase, sale, or disposition of recyclable materials.

(18) "Residential solid waste stream" means that part of the solid waste stream that is collected by the District government.

(19) "Residential property" means property that receives solid waste collection services from the District government including single family dwellings and any building or structure containing 3 or fewer dwelling units used exclusively for residential purposes.

(20) "Source separated recyclable material" means a recyclable material, including paper, metal, glass, yard waste, office paper, or plastic that is stored separately from residential and commercial solid waste for the purposes of collection, disposition, and recycling.

(21) "Solid waste" means garbage, refuse, or any other waste product including solid, liquid, semisolid, or contained gaseous material resulting from an industrial, commercial, or government operation or a community activity.

(22) "Solid waste stream" means all residential and commercial garbage or refuse generated within the District that, unless recycled, would be disposed of by landfilling or incineration.

(23) "White goods" means refrigerators, stoves, ice freezers or appliances that may contain chlorofluorocarbons.

(24) "Yard waste" means any organic material, except food, and includes wood, mulch, leaves, or plants. (Mar. 16, 1989, D.C. Law 7-226, § 4, 36 DCR 595; Mar. 15, 1990, D.C. Law 8-93, § 2(a), 37 DCR 780; Sept. 8, 1990, D.C. Law 8-154, § 2(a), 37 DCR 4045; Feb. 5, 1994, D.C. Law 10-68, § 19(a), 40 DCR 6311; Sept. 24, 1994, D.C. Law 10-178, § 3(a), 41 DCR 5205.)

Effect of amendments. — D.C. Law 10-68 substituted "property" for "establishment" in (10).

D.C. Law 10-178 deleted the former last sentence in (19).

Legislative history of Law 7-226. — See note to § 6-3401.

Legislative history of Law 8-93. — Law 8-93, the "District of Columbia Solid Waste Management and Multi-Material Recycling Act of 1988 Amendment Temporary Act of 1989," was introduced in Council and assigned Bill No. 8-484. The Bill was adopted on first and second readings on December 5, 1989, and December 19, 1989, respectively. Signed by the Mayor on January 11, 1990, it was assigned Act No. 8-144 and transmitted to both Houses of Congress for its review. Law 8-93 became effective on March 15, 1990.

Legislative history of Law 8-154. — Law 8-154, the "Recycling Clarification Amendment Act of 1990," was introduced in Council and

assigned Bill No. 8-408, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on May 15, 1990, and May 29, 1990, respectively. Signed by the Mayor on June 14, 1990, it was assigned Act No. 8-215 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-68. — D.C. Law 10-68, the "Technical Amendments Act of 1993," was introduced in Council and assigned Bill No. 10-166, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 23, 1993, it was assigned Act No. 10-107 and transmitted to both Houses of Congress for its review. D.C. Law 10-68 became effective on February 5, 1994.

Legislative history of Law 10-178. — Law 10-178, the "District of Columbia Solid Waste Management and Multi-Material Recycling Act of 1988 Amendment Act of 1994," was intro-

duced in Council and assigned Bill No. 10-10, which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on June 7, 1994, and July 5, 1994, respectively. Signed by

the Mayor on July 26, 1994, it was assigned Act No. 10-303 and transmitted to both Houses of Congress for its review. D.C. Law 10-178 became effective on September 24, 1994.

§ 6-3404. Solid waste management policy for the District.

(a) The following waste management hierarchy is established for the District:

- (1) Volume reduction at the source;
- (2) Recycling, composting, and reuse; or
- (3) Disposal in landfill facilities.

(b) On October 1, 1989, December 1, 1993, and every 2 years thereafter, the Mayor shall submit to the Council, for review, a comprehensive solid waste management plan consistent with the purposes in § 6-3402 and the hierarchy in subsection (a) of this section. The plan shall include the following:

- (1) A comprehensive analysis of the solid waste stream composition of the District for the next 10 years;
- (2) A comprehensive analysis of the solid waste disposal and recycling systems of the District for the next 20 years, including an assessment of the life expectancy of the Lorton Landfill;
- (3) An analysis of the market for recycled materials;
- (4) An analysis of recycling opportunities in the Washington Metropolitan Area;
- (5) An analysis of the feasibility of establishing local markets for recyclable materials in and near the District; and
- (6) An assessment of the risks of waste management alternatives.

(c) The Mayor shall consult with the Environmental Planning Commission established pursuant to § 2-3201, and private entities and individuals in implementing the provisions of this chapter. (Mar. 16, 1989, D.C. Law 7-226, § 5, 36 DCR 595; Sept. 24, 1994, D.C. Law 10-178, § 3(b), 41 DCR 5205.)

Effect of amendments. — D.C. Law 10-178 substituted “On October 1, 1989, December 1, 1993, and every 2 years thereafter” for “Beginning on October 1, 1989 and every 2 years after that date” at the beginning of the introductory language of (b); and substituted “Environmental Planning Commission” for “Litter and Solid Waste Reduction Commission” in (c).

Temporary amendments of section. — Section 2(a) of D.C. Law 9-263 effective March 27, 1993, amended the introductory language of (b) to read as follows: “On October 1, 1989, June 1, 1993, and every 2 years thereafter, the Mayor shall submit to the Council, for review, a comprehensive solid waste management plan consistent with the purposes in § 6-3402 and the hierarchy in subsection (a) of this section. The plan shall include the following:”

Section 3(b) of D.C. Law 9-263 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of

the District of Columbia Solid Waste Management and Multi-Material Recycling Act of 1988 Amendment Act of 1992, whichever occurs first.

Section 2(a) of D.C. Law 10-86 amended the introductory language of (b) to read as follows:

“(b) On October 1, 1989, June 1, 1993, and every 2 years thereafter, the Mayor shall submit to the Council, for review, a comprehensive solid waste management plan consistent with the purposes in § 6-3402 and the hierarchy in subsection (a) of this section. The plan shall include the following:”

Section 3(b) of D.C. Law 10-86 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the District of Columbia Solid Waste Management and Multi-Material Recycling Act of 1988 Amendment Act of 1993, whichever occurs first.

Emergency act amendments. — For temporary amendment of section, see § 2(a) of the District of Columbia Solid Waste Management

and Multi-Material Recycling Act of 1988 Emergency Amendment Act of 1992 (D.C. Act 9-346, December 22, 1992, 40 DCR 141).

For temporary amendments of section, see § 2(a) of the District of Columbia Solid Waste Management and Multi-Material Recycling Act of 1988 Emergency Amendment Act of 1993 (D.C. Act 10-147, November 4, 1993, 40 DCR 8091) and § 2(a) of the District of Columbia Solid Waste Management and Multi-Material Recycling Act of 1988 Congressional Review Emergency Amendment Act of 1994 (D.C. Act 10-185, February 2, 1994, 41 DCR 627).

Legislative history of Law 7-226. — See note to § 6-3401.

Legislative history of Law 9-263. — Law 9-263, the “District of Columbia Solid Waste Management and Multi-Material Recycling Act of 1988 Temporary Amendment Act of 1992,” was introduced in Council and assigned Bill No. 9-734. The Bill was adopted on first and second readings on December 15, 1992, and January 5, 1993, respectively. Signed by the

Mayor on January 26, 1993, it was assigned Act No. 9-411 and transmitted to both Houses of Congress for its review. D.C. Law 9-263 became effective on March 27, 1993.

Legislative history of Law 10-86. — Law 10-86, the “District of Columbia Solid Waste Management and Multi-Material Recycling Act of 1988 Temporary Amendment Act of 1993,” was introduced in Council and assigned Bill No. 10-462. The Bill was adopted on first and second readings on November 2, 1993, and December 7, 1993, respectively. Signed by the Mayor on December 16, 1993, it was assigned Act No. 10-160 and transmitted to both Houses of Congress for its review. D.C. Law 10-86 became effective on March 19, 1994.

Legislative history of Law 10-178. — See note to § 6-3403.

Delegation of Authority Pursuant to D.C. Law 7-226, the “D.C. Solid Waste Management & Multi-Material Recycling Act of 1988”. — See Mayor’s Order 89-160, July 20, 1989.

§ 6-3405. Priority for recycling.

The Mayor shall not construct or retrofit any facility in the District for the purpose of solid waste incineration or resource recovery through incineration until all of the provisions of this chapter are implemented or a 25% reduction in the solid waste stream is achieved through District-wide recycling, whichever comes first. (Mar. 16, 1989, D.C. Law 7-226, § 6, 36 DCR 595.)

Legislative history of Law 7-226. — See note to § 6-3401.

Delegation of Authority Pursuant to D.C. Law 7-226, the “D.C. Solid Waste Man-

agement & Multi-Material Recycling Act of 1988”. — See Mayor’s Order 89-160, July 20, 1989.

§ 6-3406. Recyclable materials recovery targets.

(a) The Mayor shall adhere to recovery targets for recyclable materials which shall include, at a minimum, the following schedule:

(1) The recycling of at least 10% of the total commercial solid waste stream of the prior year by the end of the first full year that the mandatory source separation requirements of § 6-3407(a) are in effect;

(2) The recycling of at least 15% of the total solid waste stream of the prior year by the end of the first full year that the mandatory source separation requirements of § 6-3407(c) are in effect;

(3) The recycling of at least 35% of the total solid waste stream of the District by October 1, 1992; and

(4) The recycling of at least 45% of the total solid waste stream of the District by October 1, 1994.

(b) For the purpose of this section, the term “total solid waste stream” means the sum of the residential and commercial solid waste stream disposed of as solid waste, measured in tons, plus the total number of residential and commercial recyclable materials recycled.

(c) The calculation of the recyclable materials recovery targets shall consist of the sum of the total solid waste stream divided by the sum of the residential and commercial recyclable materials recycled. (Mar. 16, 1989, D.C. Law 7-226, § 7, 36 DCR 595; Sept. 24, 1994, D.C. Law 10-178, § 3(c), 41 DCR 5205.)

Section references. — This section is referred to in §§ 6-3408 and 6-3414.

Effect of amendments. — D.C. Law 10-178, in (b), inserted “residential and commercial” twice and deleted “by the District” following “disposed of as solid waste”; and added (c).

Legislative history of Law 7-226. — See note to § 6-3401.

Legislative history of Law 10-178. — See note to § 6-3403.

Delegation of Authority Pursuant to D.C. Law 7-226, the “D.C. Solid Waste Management & Multi-Material Recycling Act of 1988”. — See Mayor’s Order 89-160, July 20, 1989.

§ 6-3407. Mandatory source separation program.

(a) By October 1, 1989, owners and occupants of commercial property shall separate from their solid waste, bundle or containerize, and provide for the recycling of all newspaper. In addition, owners and occupants of office buildings, including the District government, shall separate for collection and provide for the recycling of all paper, as required by the Mayor by rules issued pursuant to § 6-3418.

(b) By October 1, 1990, owners and occupants of commercial property shall separate for collection and provide for the recycling of all glass and metal.

(c) By October 1, 1989, occupants of residential property shall separate from their solid waste and separately bundle or containerize all yard waste and newspaper for recycling, as required by the Mayor by rules pursuant to § 6-3418. The Mayor shall provide recycling collection services for yard waste and newspaper no less than twice each month and notify all residents receiving collection services from the District of scheduled collection days as required by subsection (e) of this section.

(d) By April 1, 1990, occupants of residential property shall separate from their solid waste and containerize all metals and glass in 1 container as required by the Mayor by rules issued pursuant to § 6-3418. The Mayor shall provide collection services and establish a collection schedule to implement this subsection pursuant to subsection (e) of this section.

(e) The Mayor shall, by July 1, 1989, and at least once every 6 months after that date, notify all persons occupying residential premises within the District of local recycling opportunities, the dates for collection of source separated materials, and all other source separation requirements of this chapter. In order to fulfill the notification requirements of this subsection, the Mayor shall advertise in a newspaper with wide circulation in the District, post in public places, and mail notice with the residential water and sewer bills as the Mayor deems necessary and appropriate.

(f) The Mayor shall have the authority to mandate the source separation and recycling of any other component of the solid waste stream by owners and occupants of residential and commercial properties in the District of Columbia. (Mar. 16, 1989, D.C. Law 7-226, § 8, 36 DCR 595; Mar. 15, 1990, D.C. Law 8-93, § 2(b), 37 DCR 780; Sept. 8, 1990, D.C. Law 8-154, § 2(b), 37 DCR 4045; Sept. 24, 1994, D.C. Law 10-178, § 3(d), 41 DCR 5205.)

Section references. — This section is referred to in §§ 6-3406 and 6-3408.

Effect of amendments. — D.C. Law 10-178 substituted “container” for “bin” in (d); and added (f).

Temporary amendments of section. — Section 2(b) of D.C. Law 9-263 effective March 27, 1993, amended this section to read as follows: “(a) By October 2, 1992, occupants of commercial property shall separate from their solid waste, bundle or containerize, and provide for the recycling of all newspaper. In addition, occupants of office buildings, including the District government, shall separate for collection and provide for the recycling of all paper, as required by the Mayor by rules issued pursuant to § 6-3418.

“(b) By October 2, 1992, occupants of commercial property shall separate for collection and provide for the recycling of all glass and metal.

“(c) By October 1, 1989, occupants of residential property shall separate from their solid waste and separately bundle or containerize all yard waste and newspaper for recycling, as required by the Mayor by rules pursuant to § 6-3418. The Mayor shall provide recycling collection services for yard waste and newspaper no less than twice each month and notify all residents receiving collection services from the District of scheduled collection days as required by subsection (e) of this section. This section shall apply to condominiums and cooperatives by October 1, 1993.

“(d) By April 1, 1990, occupants of residential property shall separate from their solid waste and containerize all metals and glass in 1 bin as required by the Mayor by rules issued pursuant to § 6-3418. The Mayor shall provide collection services and establish a collection schedule to implement this subsection by October 1, 1993.

“(e) The Mayor shall, by July 1, 1989, and at least once every 6 months after that date, notify all persons occupying residential premises within the District of local recycling opportunities, the dates for collection of source separated materials, and all other source separation requirements of this chapter. In order to fulfill the notification requirements of this subsection, the Mayor shall advertise in a newspaper with wide circulation in the District, post in public places, and mail notice with the residential water and sewer bills as the Mayor deems necessary and appropriate.

“(f) The Mayor shall have the authority to mandate the source separation and recycling of any other component of the solid waste stream by owners and occupants of residential and commercial properties in the District.”

Section 3(b) of D.C. Law 9-263 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of

the District of Columbia Solid Waste Management and Multi-Material Recycling Act of 1988 Amendment Act of 1992, whichever occurs first.

Section 2(b) of D.C. Law 10-86 amended this section to read as follows:

“(a) By October 2, 1992, occupants of commercial property shall separate from their solid waste, bundle or containerize, and provide for the recycling of all newspaper. In addition, occupants of office buildings, including the District government, shall separate for collection and provide for the recycling of all paper, as required by the Mayor by rules issued pursuant to § 6-3418.

“(b) By October 2, 1992, occupants of commercial property shall separate for collection and provide for the recycling of all glass and metal.

“(c) By October 1, 1989, occupants of residential property shall separate from their solid waste and separately bundle or containerize all yard waste and newspaper for recycling, as required by the Mayor by rules pursuant to § 6-3418. The mayor shall provide recycling collection services for yard waste and newspaper no less than twice each month and notify all residents receiving collection services from the District of scheduled collection days as required by subsection (e) of this section. This section shall apply to condominiums and cooperatives by October 1, 1993.

“(d) By April 1, 1990, occupants of residential property shall separate from their solid waste and containerize all metals and glass in 1 bin as required by the Mayor by rules issued pursuant to § 6-3418. The Mayor shall provide collection services and establish a collection schedule to implement this subsection by October 1, 1993.

“(e) The Mayor shall, by July 1, 1989, and at least once every 6 months after that date, notify all persons occupying residential premises within the District of local recycling opportunities, the dates for collection of source separated materials, and all other source separation requirements of this chapter. In order to fulfill the notification requirements of this subsection, the Mayor shall advertise in a newspaper with wide circulation in the District, post in public places, and mail notice with the residential water and sewer bills as the Mayor deems necessary and appropriate.

“(f) The Mayor shall have the authority to mandate the source separation and recycling of any other component of the solid waste stream by owners and occupants of residential and commercial properties in the District.”

Section 3(b) of D.C. Law 10-86 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the District of Columbia Solid Waste Management and Multi-Material Recycling Act of 1988 Amendment Act of 1993, whichever occurs first.

Emergency act amendments. — For temporary amendment of section, see § 2(b) of the District of Columbia Solid Waste Management and Multi-Material Recycling Act of 1988 Emergency Amendment Act of 1992 (D.C. Act 9-346, December 22, 1992, 40 DCR 141).

For temporary amendments of section, see § 2(b) of the District of Columbia Solid Waste Management and Multi-Material Recycling Act of 1988 Emergency Amendment Act of 1993 (D.C. Act 10-147, November 4, 1993, 40 DCR 8091) and § 2 (b) of the District of Columbia Solid Waste Management and Multi-Material Recycling Act of 1988 Congressional Review Emergency Amendment Act of 1994 (D.C. Act 10-185, February 2, 1994, 41 DCR 627).

Legislative history of Law 7-226. — See note to § 6-3401.

Legislative history of Law 8-93. — See note to § 6-3403.

Legislative history of Law 8-154. — See note to § 6-3403.

Legislative history of Law 9-263. — See note to § 6-3404.

Legislative history of Law 10-86. — See note to § 6-3404.

Legislative history of Law 10-178. — See note to § 6-3403.

Delegation of Authority Pursuant to D.C. Law 7-226, the "D.C. Solid Waste Management & Multi-Material Recycling Act of 1988." — See Mayor's Order 89-160, July 20, 1989.

§ 6-3408. Establishment of Office of Recycling.

(a) The Office of Recycling is established as a single administrative unit within the executive office of the Director of the Department of Public Works to administer the recycling program in the District.

(b) The duties of the Office shall include to:

(1) Coordinate, supervise, and implement the mandatory source separation program established by § 6-3407, including a system to respond to citizen inquiries;

(2) Ensure the adherence of the District to target dates for solid waste reduction pursuant to § 6-3406;

(3) Develop an educational and promotional campaign, in conjunction with the Environmental Planning Commission, for commercial and residential solid waste generators on the mandatory source separation program and recycling;

(4) Research the technology available for solid waste utilization, including recycling;

(5) Identify potential markets for recyclable materials and obtain statements of interest for recovered materials;

(6) Identify the amount and characteristics of the solid waste stream in the District;

(7) Provide an assessment of the potential impact of alternative methods of solid waste management, including the public health, physical, social, economic, fiscal, environmental, and aesthetic implications;

(8) Conduct and evaluate the results of public forums or surveys of local citizen opinion on solid waste management practices in conjunction with the Environmental Planning Commission;

(9) Make site analyses;

(10) Coordinate efforts to stimulate markets for recycled materials, including District government purchasing policies;

(11) Serve as a liaison between the District and neighboring jurisdictions in developing a regional recycling and waste reduction campaign;

(12) Develop a semi-annual household hazardous waste collection day to educate citizens on household hazardous waste and convenient and safe disposal through separate collection; and

(13) License businesses and vehicles to engage in the collection or transportation of recyclable materials as required by this chapter or by rules issued pursuant to § 6-3418.

(c) Within 90 days of March 16, 1989, the Mayor shall designate a Recycling Coordinator who shall head the Office of Recycling. (Mar. 16, 1989, D.C. Law 7-226, § 9, 36 DCR 595; Sept. 8, 1990, D.C. Law 8-154, § 2(c), 37 DCR 4045; Sept. 24, 1994, D.C. Law 10-178, § 3(e), 41 DCR 5205.)

Section references. — This section is referred to in § 6-3414.

Effect of amendments. — D.C. Law 10-178, in (b), substituted "Environmental Planning Commission" for "Litter and Solid Waste Reduction Commission" in (3) and (8), and substituted "semi-annual" for "monthly" in (12).

Legislative history of Law 7-226. — See note to § 6-3401.

Legislative history of Law 8-154. — See note to § 6-3403.

Legislative history of Law 10-178. — See note to § 6-3403.

§ 6-3409. Right to recycle individual solid waste not limited.

Nothing in this chapter shall limit the right of an individual to donate, sell, or otherwise dispose of his or her recyclable materials. (Mar. 16, 1989, D.C. Law 7-226, § 10, 36 DCR 595.)

Legislative history of Law 7-226. — See note to § 6-3401.

§ 6-3410. Multi-material recycling buy-back centers and intermediate processing facilities.

(a) The Mayor shall establish, on or before October 1, 1989, at least 1 multi-material buy-back center in the District, which shall be publicly or privately operated and pay the public for recyclable materials.

(b) The Mayor shall establish at least 1 intermediate processing facility in the District to receive recyclable materials designated for source separation pursuant to this chapter and any other recyclable materials designated by the Mayor. (Mar. 16, 1989, D.C. Law 7-226, § 11, 36 DCR 595.)

Temporary amendments of section. — Section 2(c) of D.C. Law 9-263 effective March 27, 1993, amended (a) to read as follows:

"(a) The Mayor shall establish, on or before October 1, 1993, at least 1 multi-material buy-back center in the District, which shall be publicly or privately operated and pay the public for recyclable materials."

Section 3(b) of D.C. Law 9-263 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the District of Columbia Solid Waste Management and Multi-Material Recycling Act of 1988 Amendment Act of 1992, whichever occurs first.

Section 2(c) of D.C. Law 10-86 amended (a) to read as follows:

"(a) The Mayor shall establish, on or before October 1, 1993, at least 1 multimaterial buy-back center in the District, which shall be publicly or privately operated and pay the public for recyclable materials."

Section 3(b) of D.C. Law 10-86 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the District of Columbia Solid Waste Management and Multi-Material Recycling Act of 1988 Amendment Act of 1993, whichever occurs first.

Emergency act amendments. — For tem-

porary amendment of section, see § 2(c) of the District of Columbia Solid Waste Management and Multi-Material Recycling Act of 1988 Emergency Amendment Act of 1992 (D.C. Act 9-346, December 22, 1992, 40 DCR 141).

For temporary amendments of section, see § 2(c) of the District of Columbia Solid Waste Management and Multi-Material Recycling Act of 1988 Emergency Amendment Act of 1993 (D.C. Act 10-147, November 4, 1993, 40 DCR 8091) and § 2(c) of the District of Columbia Solid Waste Management and Multi-Material Recycling Act of 1988 Congressional Review

Emergency Amendment Act of 1994 (D.C. Act 10-185, February 2, 1994, 41 DCR 627).

Legislative history of Law 7-226. — See note to § 6-3401.

Legislative history of Law 9-263. — See note to § 6-3404.

Legislative history of Law 10-86. — See note to § 6-3404.

Delegation of Authority Pursuant to D.C. Law 7-226, the "D.C. Solid Waste Management & Multi-Material Recycling Act of 1988." — See Mayor's Order 89-160, July 20, 1989.

§ 6-3411. Contracting authority.

(a) The Mayor may enter into contracts or agreements on behalf of the District for recycling services or the operation of a multi-material recycling buy-back center and an intermediate processing facility for the collection, storage, processing, and disposition of recyclable materials designated to be source separated pursuant to this chapter, if these services are not otherwise provided by the District government. The Director of the Department of Public Works shall enter into contracts or agreements to market recyclable materials, including the sale or disposition of recyclable materials, and shall purchase or lease any equipment necessary to facilitate the marketing or recyclable materials.

(b) The Mayor may issue grants for solid waste and recycling research, collecting, marketing, and other services to universities and nonprofit institutions, and businesses with funds generated by the recycling surcharge authorized pursuant to § 6-3415. (Mar. 16, 1989, D.C. Law 7-226, § 12, 36 DCR 595; Mar. 15, 1990, D.C. Law 8-93, § 2(c), 37 DCR 780; Sept. 8, 1990, D.C. Law 8-154, § 2(d), 37 DCR 4045; Sept. 24, 1994, D.C. Law 10-178, § 3(f), 41 DCR 5205.)

Effect of amendments. — D.C. Law 10-178 added (b).

Temporary amendment of section. — Section 2(d) of D.C. Law 9-263 effective March 27, 1993, added (b) to read as follows:

"(b) The Mayor may issue grants for solid waste and recycling research, marketing, collection, and other services to universities and nonprofit institutions."

Section 3(b) of D.C. Law 9-263 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the District of Columbia Solid Waste Management and Multi-Material Recycling Act of 1988 Amendment Act of 1992, whichever occurs first.

Section 2(d) of D.C. Law 10-86 amended subsection (b) to read as follows:

"(b) The Mayor may issue grants for solid waste and recycling research, marketing, collection, and other services to universities and nonprofit institutions."

Section 3(b) of D.C. Law 10-86 provided that the act shall expire on the 225th day of its

having taken effect or upon the effective date of the District of Columbia Solid Waste Management and Multi-Material Recycling Act of 1988 Amendment Act of 1993, whichever occurs first.

Emergency act amendments. — For temporary amendment of section, see § 2(d) of the District of Columbia Solid Waste Management and Multi-Material Recycling Act of 1988 Emergency Amendment Act of 1992 (D.C. Act 9-346, December 22, 1992, 40 DCR 141).

For temporary amendments of section, see § 2(d) of the District of Columbia Solid Waste Management and Multi-Material Recycling Act of 1988 Emergency Amendment Act of 1993 (D.C. Act 10-147, November 4, 1993, 40 DCR 8091) and § 2(d) of the District of Columbia Solid Waste Management and Multi-Material Recycling Act of 1988 Congressional Review Emergency Amendment Act of 1994 (D.C. Act 10-185, February 2, 1994, 41 DCR 627).

Legislative history of Law 7-226. — See note to § 6-3401.

Legislative history of Law 8-93. — See note to § 6-3403.

Legislative history of Law 8-154. — See note to § 6-3403.

Legislative history of Law 9-263. — See note to § 6-3404.

Legislative history of Law 10-86. — See note to § 6-3404.

Legislative history of Law 10-178. — See note to § 6-3403.

Delegation of Authority Pursuant to D.C. Law 7-226, the “D.C. Solid Waste Management & Multi-Material Recycling Act of 1988.” — See Mayor’s Order 89-160, July 20, 1989.

§ 6-3412. Compost materials use requirements.

The Mayor shall, to the maximum extent practicable and feasible, use compost materials in any land maintenance activity operated with public funds and make compost materials available to the public. (Mar. 16, 1989, D.C. Law 7-226, § 13, 36 DCR 595.)

Legislative history of Law 7-226. — See note to § 6-3401.

Delegation of Authority Pursuant to D.C. Law 7-226, the “D.C. Solid Waste Man-

agement & Multi-Material Recycling Act of 1988.” — See Mayor’s Order 89-160, July 20, 1989.

§ 6-3413. District procurement policies.

(a) The Mayor shall modify all bid specifications relating to the purchase of paper and paper products to promote the maximum purchase of paper and products made from recycled paper and recycled paper products. Preference shall be given to recycled paper and recycled paper products, unless the price of the paper and paper products is not competitive for the purpose intended. For the purposes of this section, the term “competitive” means a price within 10% of the price of items that are manufactured or produced from virgin paper products.

(b) The Mayor shall make a yearly written determination as to whether the price of recycled paper and recycled paper products is competitive, and on the percentage of recycled paper and recycled paper products purchased by the District government during the prior year. The Mayor shall submit a copy of the report to the Council on January 1, 1990, and on January 1st of each subsequent year.

(c) Unless the price of recycled paper and recycled paper products is not competitive as determined by the Mayor pursuant to subsection (b) of this section, the percentage of the total amount of paper or paper products made from recycled paper or recycled paper products purchased by the District shall be as follows:

- (1) Not less than 15% by October 1, 1990;
- (2) Not less than 30% by October 1, 1991; and
- (3) Not less than 45% by October 1, 1992.

(d) The Mayor, after formal advertisement and solicitation of proposals for recycled paper or recycled paper products, may award a contract for paper or paper products manufactured or produced from virgin paper products in the manner prescribed by law, if no competitive proposals for recycled paper or recycled paper products are received. The award of a contract for virgin paper products shall not relieve the Mayor of any future obligation to contract for recycled paper or recycled paper products.

(e) The Mayor shall investigate other products that are recyclable or composed, in whole or in part, of recycled materials that can be purchased for use by the District government and submit a report on the findings of the investigation and a plan for the purchase of other recycled products including glass, plastics, and tires within 6 months after March 16, 1989. (Mar. 16, 1989, D.C. Law 7-226, § 14, 36 DCR 595.)

Temporary amendments of section. — Section 2(e) of D.C. Law 9-263, effective March 27, 1993, amended (c) to read as follows:

“(c) Unless the price of recycled paper and recycled paper products is not competitive as determined by the Mayor pursuant to subsection (b) of this section, the percentage of the total amount of paper or paper products made from recycled paper or recycled paper products purchased by the District shall be as follows:

“(1) Not less than 15% by October 1, 1994;

“(2) Not less than 30% by October 1, 1995; and

“(3) Not less than 45% by October 1, 1996.”

Section 3(b) of D.C. Law 9-263 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the District of Columbia Solid Waste Management and Multi-Material Recycling Act of 1988 Amendment Act of 1992, whichever occurs first.

Section 2(e) of D.C. Law 10-86 amended (c) to read as follows:

“(c) Unless the price of recycled paper and recycled paper products is not competitive as determined by the Mayor pursuant to subsection (b) of this section, the percentage of the total amount of paper or paper products made from recycled paper or recycled paper products purchased by the District shall be as follows:

“(1) Not less than 15% by October 1, 1994;

“(2) Not less than 30% by October 1, 1995; and

“(3) Not less than 45% by October 1, 1996.”

Section 3(b) of D.C. Law 10-86 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the District of Columbia Solid Waste Management and Multi-Material Recycling Act of 1988 Amendment Act of 1993, whichever occurs first.

Emergency act amendments. — For temporary amendment of section, see § 2(e) of the District of Columbia Solid Waste Management and Multi-Material Recycling Act of 1988 Emergency Amendment Act of 1992 (D.C. Act 9-346, December 22, 1992, 40 DCR 141).

For temporary amendments of section, see § 2(e) of the District of Columbia Solid Waste Management and Multi-Material Recycling Act of 1988 Emergency Amendment Act of 1993 (D.C. Act 10-147, November 4, 1993, 40 DCR 8091) and § 2(e) of the District of Columbia Solid Waste Management and Multi-Material Recycling Act of 1988 Congressional Review Emergency Amendment Act of 1994 (D.C. Act 10-185, February 2, 1994, 41 DCR 627).

Legislative history of Law 7-226. — See note to § 6-3401.

Legislative history of Law 9-263. — See note to § 6-3404.

Legislative history of Law 10-86. — See note to § 6-3404.

Delegation of Authority Pursuant to D.C. Law 7-226, the “D.C. Solid Waste Management & Multi-Material Recycling Act of 1988.” — See Mayor’s Order 89-160, July 20, 1989.

§ 6-3414. Annual reporting requirements; submission of plan.

(a) Beginning on January 15, 1991, and on each January 15th of each subsequent year, the Mayor shall submit a recycling report to the Council for review, which shall contain the following:

(1) The tonnage of solid waste generated, disposed of, and recycled by the District;

(2) An evaluation of the mandatory recycling program established pursuant to this chapter;

(3) The tonnage of paper collected and recycled from District government offices;

(4) The revenue generated through the disposition of recycled materials for the District;

(5) The approximate cost avoidance achieved through the District's mandatory recycling program;

(6) The overall success of meeting the recovery targets set forth in § 6-3406;

(7) An evaluation of markets for recycled materials and how District policies have stimulated markets;

(8) An evaluation of the educational and promotional campaign on the mandatory source separation program as developed by the District of Columbia Recycling Coordinator pursuant to § 6-3408.

(b) By October 1, 1989, the Mayor shall submit to the Council a plan for the following:

(1) The recovery of tires from the solid waste stream for reuse, recycling, or other disposition;

(2) The segregation, treatment, labeling, tracking, transportation, and disposition of medical, infectious, and hazardous waste;

(3) The recycling and reuse of construction and demolition wastes;

(4) The provision of tax incentives and low interest loans to District businesses and residents that use recycled products or purchase or lease recycling equipment;

(5) The recycling of plastic polystyrene and polyvinyl chloride containers. (Mar. 16, 1989, D.C. Law 7-226, § 15, 36 DCR 595; Sept. 24, 1994, D.C. Law 10-178, § 3(g), 41 DCR 5205.)

Effect of amendments. — D.C. Law 10-178 inserted "and residents" in (b)(4).

Legislative history of Law 7-226. — See note to § 6-3401.

Legislative history of Law 10-178. — See note to § 6-3403.

Delegation of Authority Pursuant to D.C. Law 7-226, the "D.C. Solid Waste Management & Multi-Material Recycling Act of 1988." — See Mayor's Order 89-160, July 20, 1989.

§ 6-3415. Recycling surcharge.

(a) The Mayor shall maintain a recycling surcharge on all private haulers of solid waste who dispose of solid waste through the solid waste disposal system of the District to offset the cost of developing new and additional methods of solid waste management. Money generated from this surcharge shall be used to fund recycling activities in the District, no more than 25% of which shall go to fund the recycling educational and promotional activities of the Environmental Planning Commission.

(b) On January 15th of each year the Mayor shall submit to the Council the following:

(1) An annual report on all income received from the recycling surcharge during the previous fiscal year;

(2) A line-item report on all disbursements made from the recycling surcharge during the previous fiscal year; and

(3) A proposed plan for the use of all monies in the recycling surcharge for the current fiscal year.

(c) The proposed plan submitted by the Mayor pursuant to subsection (b)(3) of this section shall be submitted to the Council for approval, in whole or in

part, by resolution. The expenditure of recycling surcharge monies shall be subject to Council approval of the annual report required to be submitted pursuant to subsection (b)(1) of this section. (Mar. 16, 1989, D.C. Law 7-226, § 16, 36 DCR 595; Nov. 20, 1993, D.C. Law 10-62, § 7(b), 40 DCR 7237; May 20, 1994, D.C. Law 10-117, § 8(b), 41 DCR 524; Sept. 24, 1994, D.C. Law 10-178, § 3(h), 41 DCR 5205.)

Section references. — This section is referred to in §§ 6-2905, 6-2907, 6-2915, 6-3411, and 6-3422.

Effect of amendments. — D.C. Law 10-117 added a (b).

D.C. Law 10-178 added the designation "(a)" and added (b) and (c); and, in (a), substituted "Environmental Planning Commission" for "Litter and Solid Waste Reduction Commission."

Neither D.C. Law 10-117 nor Law 10-178 referred to the other and effect has been given to Law 10-178 as the one approved later.

Temporary amendments of section. — Section 7(b) of D.C. Law 10-62 designated the existing provisions as (a); and added a (b) which read:

"(b) The Mayor shall collect a recycling surcharge fee of \$2 for new motor vehicle tires sold in the District of Columbia. Subject to the enactment of appropriations for that purpose, the proceeds from this surcharge shall be deposited in the Recycling Surcharge Fund established under this section."

Section 8(b) of D.C. Law 10-62 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Illegal Dumping Enforcement Act of 1993 whichever occurs first.

Section 2 of D.C. Law 10-191 amended this section to read as follows:

"(a)(1) The Mayor shall impose a recycling surcharge on all persons who dispose of solid waste through the solid waste disposal system of the District to offset the cost of developing new and additional methods of solid waste management.

"(2) The Mayor shall provide a credit to apply to the recycling surcharge imposed by this subsection for persons who pay the fee imposed by subsection (b) of this section which shall be equivalent to the recycling surcharge imposed by this subsection.

"(b) The Mayor shall impose a fee, for the privilege of collecting solid waste as a commercial activity, on all persons licensed to collect solid waste in the District. The fee shall be equivalent to the recycling surcharge authorized in subsection (a) of this section.

"(c) Persons subject to the recycling surcharge or the fee imposed pursuant to this section shall:

"(1) Submit periodic reports to the Mayor

at the times specified by regulation; the reports shall contain all information the Mayor considers reasonably necessary to determine compliance with this chapter, including the quantity of solid waste collected and disposed; and

"(2) Retain records of solid waste collected and disposed for 3 years or such other period of time as the Mayor may prescribe.

"(d) For the purpose of ensuring compliance with this section, the Mayor may periodically inspect all records, documents, or data compilations in the possession or control of persons subject to the recycling surcharge or fee required by this section. Inspections shall take place during normal operating hours.

"(e) Failure to maintain records, submit periodic reports, or pay the recycling surcharge or fee required by this section may result in the imposition of 1 or more of the following penalties:

"(1) A \$25,000 fine;

"(2) An assessment of twice the amount of the recycling surcharge or fee due; or

"(3) Suspension or revocation of a solid waste collector's license issued pursuant to § 606(a) of Chapter 3 of Title 8 of the District of Columbia Health Regulations, issued June 29, 1971 (Reg. 71-21; 21 DCMR 710).

"(f) Money generated from the surcharge and fee required by this section shall be used to fund recycling activities in the District, no more than 25% of which shall go to fund the recycling educational and promotional activities of the Litter and Solid Waste Reduction Commission."

Section 4(b) of D.C. Law 10-191 provided that this act shall expire on the 225th day of its having taken effect or upon the effective date of the Recycling Fee and Illegal Dumping Amendment Act of 1994, whichever occurs first.

Emergency act amendments. — For temporary amendments of section, see § 7(b) of the Illegal Dumping Enforcement Emergency Act of 1993 (D.C. Act 10-89, August 4, 1993, 40 DCR 6074) and § 7(b) of the Illegal Dumping Enforcement Congressional Recess Emergency Act of 1993 (D.C. Act 10-138, November 1, 1993, 40 DCR 7741).

For temporary amendment of section, see § 2 of the Recycling Fee and Illegal Dumping Emergency Amendment Act of 1994 (D.C. Act 10-269, July 7, 1994, 41 DCR 4669).

Legislative history of Law 7-226. — See note to § 6-3401.

Legislative history of Law 10-62. — D.C. Law 10-62, the “Illegal Dumping Enforcement Temporary Act of 1993,” was introduced in Council and assigned Bill No. 10-353. The Bill was adopted on first and second readings on July 13, 1993, and September 21, 1993, respectively. Signed by the Mayor on October 4, 1993, it was assigned Act No. 10-115 and transmitted to both Houses of Congress for its review. D.C. Law 10-62 became effective on November 20, 1993.

Legislative history of Law 10-117. — Law 10-117, the “Illegal Dumping Enforcement Act

of 1994,” was introduced in Council and assigned Bill No. 10-249, which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on December 7, 1993, and January 4, 1994, respectively. Signed by the Mayor on January 25, 1994, it was assigned Act No. 10-181 and transmitted to both Houses of Congress for its review. D.C. Law 10-117 became effective on May 20, 1994.

Legislative history of Law 10-178. — See note to § 6-3403.

§ 6-3416. Information clearinghouse.

The Mayor shall maintain a central clearinghouse for information regarding the implementation of this chapter and recycling in general. The clearinghouse shall provide data regarding solid waste research and planning, solid waste management policies, markets for recyclable materials, and regional cooperation. (Mar. 16, 1989, D.C. Law 7-226, § 17, 36 DCR 595.)

Legislative history of Law 7-226. — See note to § 6-3401.

Delegation of Authority Pursuant to D.C. Law 7-226, the “D.C. Solid Waste Man-

agement & Multi-Material Recycling Act of 1988”. — See Mayor’s Order 89-160, July 20, 1989.

§ 6-3417. Enforcement.

(a) The provisions of this chapter, including the establishment of a schedule of fines for violations of this chapter, shall be enforced by the Mayor pursuant to Chapter 29 of Title 6.

(b) In addition to the penalties imposed pursuant to subsection (a) of this section, the Mayor may refuse to collect or dispose of any solid waste that is not separated as required by this chapter or any rules issued pursuant to § 6-3418.

(c) The Mayor may deny the issuance or renewal of a license to engage in commercial collection or transportation of solid wastes by vehicle if the applicant does not guarantee that recyclable materials separated as required by this chapter or by rules issued pursuant to § 6-3418 will be recycled. (Mar. 16, 1989, D.C. Law 7-226, § 18, 36 DCR 595.)

Legislative history of Law 7-226. — See note to § 6-3401.

Delegation of Authority Pursuant to D.C. Law 7-226, the “D.C. Solid Waste Man-

agement & Multi-Material Recycling Act of 1988”. — See Mayor’s Order 89-160, July 20, 1989.

§ 6-3418. Rules.

Within 90 days after March 16, 1989, the Mayor shall, pursuant to subchapter I of Chapter 15 of Title 1, issue proposed rules to implement the provisions of this chapter. The proposed rules shall be submitted to the Council for a 45-day period of review excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the

proposed rules in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved. (Mar. 16, 1989, D.C. Law 7-226, § 20, 36 DCR 595.)

Section references. — This section is referred to in §§ 6-3407, 6-3408, and 6-3417.

Legislative history of Law 7-226. — See note to § 6-3401.

Approval in part and disapproval in part of proposed rules. — Pursuant to Resolution 8-102, the “District of Columbia Solid Waste Management and Multi-Material Recycling Act Proposed Rules Approval and Disapproval Resolution of 1989”, effective October 10, 1989, the Council approved in part and disapproved in part the proposed rules issued pursuant to the District of Columbia Solid Waste Management and Multi-Material Recycling Act of 1988.

Pursuant to Resolution 8-201, the “District of Columbia Solid Waste Management & Multi-Material Recycling Act Proposed Amendments to Rules Approval & Disapproval Resolution of 1990”, effective February 9, 1990, the Council approved in part and disapproved in part the

proposed rules issued pursuant to the District of Columbia Solid Waste Management and Multi-Material Recycling Act of 1988.

Approval and disapproval of amendments to rules. — Pursuant to Resolution 8-228, the “District of Columbia Solid Waste Management and Multi-Material Recycling Act Proposed Mayoral Amendments to Rules Approval & Disapproval Resolution of 1990”, effective June 8, 1990, the Council approved, in part, and disapproved, in part, the proposed Mayoral amendments to the rules issued pursuant to the District of Columbia Solid Waste Management and Multi-Material Recycling Act of 1988.

Recycling Rules Amendment Conditional Approval Resolution of 1992. — Pursuant to Resolution 9-231, effective May 22, 1992, the Council conditionally approved the proposed rules to amend the recycling regulations and corresponding schedule of fines.

§ 6-3419. Minimum recycled content percentage requirements.

(a) Except as provided in subsection (g) of this section, beginning on January 1, 1994, if any person, including any partnership, corporation, or association, sells or distributes a significant quantity of a paper or paper product, subject to this section, in the District of Columbia (“District”), the paper or paper product shall contain in the aggregate for the calendar year at least the minimum percentage of recycled content designated in this section or in the rules issued, or amended, by the United States Environmental Protection Agency (“EPA”) pursuant to § 6002 of the Resource Conservation and Recovery Act of 1976, approved October 21, 1976 (90 Stat. 2822; 42 U.S.C. § 6962), and set forth in 40 CFR 250.21 (Table 1).

(b) For the purposes of this section, the phrase “significant quantity” of a paper or paper product means an average per-issue circulation of at least 30,000 copies, an annual weight of at least 500 tons, or annual gross receipts of at least \$100,000 from the sale or distribution of a paper or paper product. The phrase “paper or paper product subject to this section” means any paper or paper product selected by the EPA for inclusion in the table set forth in subsection (c) of this section. If the EPA finds insufficient production of a particular paper or paper product with recycled content to assure adequate competition, the paper or paper product shall not be subject to this section.

(c) Table of minimum recycled content requirements.

	Minimum percentage of recovered materials	Minimum percentage of postconsumer recovered materials	Minimum percentage of waste paper
Newsprint	—	40	—
High grade bleached printing and writing paper:			
Offset printing	—	—	50
Mimeo and duplicator paper	—	—	50
Writing (stationery)	—	—	50
Office paper (e.g. note pads)	—	—	50
Paper for high-speed copiers	—	—	*
Envelopes	—	—	50
Form bond including computer paper and carbonless	—	—	*
Book papers	—	—	50
Bond papers	—	—	50
Ledger	—	—	50
Cover stock	—	—	50
Cotton fiber papers	25	—	—
Tissue products:			
Toilet tissue	—	20	—
Paper towels	—	40	—
Paper napkins	—	30	—
Facial tissue	—	5	—
Doilies	—	40	—
Industrial wipers	—	0	—
Unbleached packaging:			
Corrugated boxes	—	35	—
Fiber boxes	—	35	—
Brown paper (e.g., bags)	—	5	—
Recycled paperboard:			
Recycled paperboard products including folding cartons	—	80	—
Pad backing	—	90	—

*EPA found insufficient production of these papers with recycled content to assure adequate competition.

(d) For the purposes of this section, the terms used in the table of minimum recycled content requirements in subsection (c) of this section shall have the same meaning as those terms have in 40 CFR 250.4.

(e) The Mayor shall publish notice in the District of Columbia Register within 30 days after any amendment by the EPA to 40 CFR subsection 250.21 (Table 1) regarding the minimum recycled content requirements set forth in subsection (c) of this section. Any amendment to the table shall also be published in the District of Columbia Code.

(f) Notwithstanding the date for compliance with the recycled content percentage requirements set forth in subsection (a) of this section, the dates for compliance with the recycled content percentage requirement for newsprint shall be as follows:

- (1) 12% for calendar year ("CY") 1992;
- (2) 12% for CY 1993; and
- (3) 20% for CY 1994 and all subsequent calendar years.

(g)(1) The recycled content percentages for newsprint required by this section for newspapers sold or distributed in the District shall be measured in the aggregate for all such newspapers collectively, on a District-wide basis.

(2) However, in the year following any year in which the Mayor determines, based on the reports submitted under § 6-3420, that the required recycled content percentages for newsprint for the previous year were not achieved in the aggregate on a District-wide basis, then each person subject to this section shall meet the required percentages. (Mar. 16, 1989, D.C. Law 7-226, § 22, as added Mar. 6, 1991, D.C. Law 8-208, § 2, 37 DCR 8458; July 22, 1992, D.C. Law 9-130, § 2(a), 39 DCR 4054; Feb. 5, 1994, D.C. Law 10-68, § 19(a), 40 DCR 6311.)

Section references. — This section is referred to in §§ 6-3420, 6-3421, and 6-3422.

Effect of amendments. — D.C. Law 9-130 in (a) inserted "Except as provided in subsection (g) of this section," and "this section or in"; in (f) inserted "and subsequent calendar years" in (3) and deleted (4), (5), (6), and (7); and added (g).

D.C. Law 10-68 in (a), substituted "United" for "Unted," "2822" for "2795" and "(Table 1)" for "(Table I)"; in (c), substituted "Toilet tissue" for "Tiolet tissue"; and, in (e), substituted "250.21 (Table 1)" for "250.21 (Table I).

Legislative history of Law 8-208. — Law 8-208, the "Paper and Paper Products Recy-

cling Incentive Amendment Act of 1990," was introduced in Council and assigned Bill No. 8-418, which was referred to the Committee on Public Services. The Bill was adopted on first and second readings on November 20, 1990, and December 4, 1990, respectively. Signed by the Mayor on December 14, 1990, it was assigned Act No. 8-283 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-130. — See note to § 6-3422.1.

Legislative history of Law 10-68. — See note to § 6-3403.

§ 6-3420. Minimum recycled content reporting requirements.

(a) Any corporation required to file a District annual report for foreign and domestic corporations shall indicate in its annual report whether the corporation is a seller or distributor of a paper or paper product with a per-issue circulation of more than 30,000 copies, an annual weight of more than 500 tons, or annual gross receipts that exceed \$100,000 in the District.

(b) Any person subject to § 6-3419 shall submit an annual report to the Office of Recycling that sets forth the amount and percentage of recycled content of any paper or paper product sold or distributed as required in § 6-3419. (Mar. 16, 1989, D.C. Law 7-226, § 23, as added Mar. 6, 1991, D.C. Law 8-208, § 2, 37 DCR 8458.)

Section references. — This section is referred to in §§ 6-3419 and 6-3422.1.

Legislative history of Law 8-208. — See note to § 6-3419.

§ 6-3421. Application for exemption and hearing procedure.

(a) Any person may apply for an exemption from the minimum recycled content requirements of § 6-3419 when the person files the annual report with the Office of Recycling. The application shall include a written certification to the Office of Recycling regarding the reasons the person is unable to obtain a sufficient amount of paper or paper products for sale or distribution that contain the required percentage of recycled material at the competitive price. Any certification shall include the name and address of any producer of recycled paper that the seller or distributor has contacted, and indicate the variance from the recycled content requirement. For the purposes of this section, the term “competitive” means a price within 10% of the price of items that are manufactured or produced from virgin material. Any paper or paper product found exempt from the requirements of § 6-3419 shall not exempt the person from compliance with the minimum content requirements for any other paper or paper product subject to § 6-3419. An application shall be approved if the Office of Recycling determines that the person has taken all reasonable steps to contract with each producer who manufactures paper or paper products that contain the required percentage of recycled material.

(b) The Office of Recycling shall, consistent with § 1-1506, before an application for an exemption is approved or denied, publish in the District of Columbia Register notice of the intended action to afford interested persons an opportunity for written comment. If at least 25 residents of the District petition the Office of Recycling for a public hearing, the Office of Recycling shall conduct a public hearing pursuant to rules issued in accordance with § 6-3423.

(c) Within 90 days after any written comments have been received or a public hearing has been conducted, whichever is later, the Office of Recycling shall publish a final decision in the District of Columbia Register, including findings of fact and conclusions of law, regarding the approval or denial of an application for an exemption.

(d) Within 30 days after a final decision is published as set forth in subsection (c) of this section, any interested person may file a written petition for judicial review in the District of Columbia Court of Appeals consistent with § 1-1510.

(e) The District of Columbia Court of Appeals may award reasonable attorney’s fees and court costs to a prevailing party who appeals the approval or intervenes to defend denial of an exemption under this section. (Mar. 16, 1989, D.C. Law 7-226, § 24, as added Mar. 6, 1991, D.C. Law 8-208, § 2, 37 DCR 8458.)

Section references. — This section is referred to in § 6-3422.

Legislative history of Law 8-208. — See note to § 6-3419.

§ 6-3422. Minimum recycled content surcharge.

(a) Subject to § 6-3419(g) and subsection (a-1) of this section, beginning in calendar year 1994, and annually thereafter, any person who fails to comply with § 6-3419 and who is not exempt under § 6-3421 shall be subject to a recycling surcharge. The recycling surcharge shall be paid by the person to the Department of Public Works before February 15, 1995, and annually thereafter, for the preceding calendar year if the aggregate tonnage of a paper or paper product sold or distributed for the reporting period contains less than the percentage of recycled content required under § 6-3419(c). If the aggregate percentage of recycled content is less than the percentage required in § 6-3419(c), the amount of the surcharge shall be 15% of the price paid for the paper or paper product sold or distributed during the reporting period that falls below the required percentage of recycled content.

(a-1)(1) For newsprint, the amount of the recycling surcharge shall be \$10 per ton for the amount of newsprint that falls below the required percentage of recycled content.

(2) The recycling surcharge for newsprint shall apply to each person subject to this section only with regard to any year in which the recycled content percentages required by this section shall be measured on a non-aggregate basis in accordance with § 6-3419(g).

(b) Revenue generated from the recycling surcharge shall be used to fund recycling activities in the District in accordance with § 6-3415. (Mar. 16, 1989, D.C. Law 7-226, § 25, as added Mar. 6, 1991, D.C. Law 8-208, § 2, 37 DCR 8458; July 22, 1992, D.C. Law 9-130, § 2(b), 39 DCR 4054.)

Effect of amendments. — D.C. Law 9-130 in (a) inserted "Subject to § 6-3419(g) and subsection (a-1) of this section,"; and inserted (a-1).

Legislative history of Law 9-130. — See note to § 6-3422.1.

Legislative history of Law 8-208. — See note to § 6-3419.

§ 6-3422.1. Establishment of a Recycled Newspaper Fiber Content Advisory Task Force.

(a) There is established a Recycled Newspaper Fiber Content Advisory Task Force ("task force").

(b) The task force shall advise the Department of Public Works with respect to the statutory requirements for the use of recycled newsprint.

(c) The task force shall convene during the 1st quarter of 1994 and will issue its report by the 3rd quarter of 1994.

(d) The composition of the task force shall be 7 members appointed by the Mayor, as follows:

(1) The Director of the Department of Public Works who shall be the Chair;

(2) 2 representatives of newspaper publishers;

(3) 2 representatives of environmental groups with expertise in recycling;

- (4) 1 representative of the recycled newsprint industry; and
- (5) 1 representative of an industry, other than newsprint, that uses old newspapers.

(e) The task force shall perform the following responsibilities:

- (1) Review the reports filed under § 6-3420;
- (2) Consider the following:

(A) Extent of recovery of old newspapers from the District's waste stream;

(B) Cost to the District to recover and market old newspapers;

(C) Availability and utilization in the District of newsprint containing recycled material; and

(D) Nature and extent of other recycling uses for old newspapers; and

(3) In accordance with paragraph (2) of this subsection, the task force may comment on whether a recycled newsprint law is necessary, and if so, whether the recycled content percentage requirement for newsprint should remain the same or be adjusted. The task force may also consider whether the recycled content requirement encourages manufacturers of virgin newsprint to convert to recycling and whether the requirement adversely affects recycling uses for old newspapers other than the production of newsprint. (Mar. 16, 1989, D.C. Law 7-226, § 25a, as added July 22, 1992, D.C. Law 9-130, § 2(c), 39 DCR 4054.)

Effect of amendments. — D.C. Law 9-130 added this section.

Legislative history of Law 9-130. — Law 9-130, the "Newsprint Recycling Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-291, which was referred to the Committee on Public Works. The Bill was

adopted on first and second readings on April 7, 1992, and May 6, 1992, respectively. Signed by the Mayor on May 28, 1992, it was assigned Act No. 9-215 and transmitted to both Houses of Congress for its review. D.C. Law 9-130 became effective on July 22, 1992.

§ 6-3423. Minimum recycled content rules.

(a) The Mayor shall, pursuant to subchapter I of Chapter 15 of Title 1, issue proposed rules to implement the provisions of the Newsprint Recycling Amendment Act of 1992 that apply to paper and paper products, other than newsprint, by January 1, 1993.

(b) The Mayor shall, pursuant to subchapter I of Chapter 15 of Title 1, issue proposed rules within 180 days of July 22, 1992, to implement the newsprint provisions of this chapter.

(c) The proposed rules shall be submitted to the Council for a 45-day period of review excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved. Nothing in this section shall affect any requirements imposed upon the Mayor by subchapter I of Chapter 15 of Title 1. (Mar. 16, 1989, D.C. Law 7-226, § 26, as added Mar. 6, 1991, D.C. Law 8-208, § 2, 37 DCR 8458; July 22, 1992, D.C. Law 9-130, § 2(b), 39 DCR 4054; Feb. 5, 1994, D.C. Law 10-68, § 19(c), 40 DCR 6311.)

Section references. — This section is referred to in § 6-3421.

Effect of amendments. — D.C. Law 9-130 rewrote this section.

D.C. Law 10-68 corrected an internal reference in the section as it appeared prior to amendment by D.C. Law 9-130.

Legislative history of Law 8-208. — See note to § 6-3419.

Legislative history of Law 9-130. — See note to § 6-3422.1.

Legislative history of Law 10-68. — See note to § 6-3403.

References in text. — The “Newsprint Recycling Amendment Act of 1992,” referred to in (a), is D.C. Law 9-130.

CHAPTER 35. LONG-TERM CARE OMBUDSMAN PROGRAM.

Subchapter I. Definitions.

Sec.

6-3501. Definitions.

Subchapter II. The Establishment of a Long-Term Care Ombudsman Program.

6-3511. Purpose and functions.

6-3512. Long-Term Care Ombudsman; appointment; vacancy.

6-3513. Same — Training and experience.

6-3514. Same — Powers and duties.

6-3515. Complaint investigation.

6-3516. Confidentiality of records and identities of residents.

6-3517. Immunity from liability.

Subchapter III. Access to Long-Term Care Facilities and to Records.

6-3521. Access to long-term care facilities.

6-3522. Access to records.

Subchapter IV. Enforcement; Penalties; Judicial Review.

Sec.

6-3531. Enforcement; penalties.

Subchapter V. Private Rights of Action.

6-3541. Injunctive relief.

6-3542. Civil action for damages.

6-3543. Court costs and attorney's fees.

Subchapter VI. Miscellaneous.

6-3551. Rules.

Subchapter I. Definitions.

§ 6-3501. Definitions.

For the purposes of this chapter, the term:

(1) "Administrator" means the person who is responsible for the day-to-day operation and management of a long-term care facility, including, in the case of a community residence facility, the residence director.

(2) "Court" means the Superior Court of the District of Columbia.

(3) "Department of Consumer and Regulatory Affairs" means the District of Columbia Department of Consumer and Regulatory Affairs established pursuant to Reorganization Plan No. 1 of 1983.

(4) "Department of Human Services" means the District of Columbia Department of Human Services established pursuant to Reorganization Plan No. 2 of 1979 and Reorganization Plan No. 3 of 1986.

(5) "Designee" means a person who:

(A) Has received a minimum of 15 hours of certified training in accordance with § 6-3514(a)(15);

(B) Is an employee of the program established pursuant to § 6-3511 or has written authorization to act on behalf of the ombudsman pursuant to § 6-3514(a)(3).

(6) "Director" means the Executive Director of the District of Columbia Office on Aging established by § 6-2212.

(7) "Long-term care facility" means:

(A) A "community residence facility" as defined in § 32-1301(a)(4); or

(B) A "nursing home" as defined in § 32-1301(a)(3).

(8) "Ombudsman" means the District of Columbia Long-Term Care Ombudsman established by § 6-3512(a) and designated under § 307(a)(12) of the

Older Americans Act of 1965; (42 U.S.C. § 3027(a)(12)), to perform the mandated functions of the Long-Term Care Ombudsman Program.

(9) "Office on Aging" means the District of Columbia Office on Aging established by § 6-2211.

(10) "Person" means an individual, an agent, a corporation, a partnership, or any other organizational entity.

(11) "Program" means the District of Columbia Long-Term Care Ombudsman Program established by § 6-3511.

(12) "Record" means:

(A) Medical, social, personal, or financial information maintained by a health-care facility covered by the Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, or by a District of Columbia ("District") government agency that has responsibility for the care and maintenance of a resident in a long-term care facility; and

(B) An administrative record, cost or incident report, or a report of a civil infraction, inspection, or deficiency maintained by a long-term care facility or a District government agency.

(13) "Resident" means a resident of a long-term care facility.

(14) "Representative of a resident" means:

(A) A person who is knowledgeable about the circumstances of a resident and has been designated by that resident to represent him or her; or

(B) A person, other than a facility, who has been appointed by a court to administer the financial or personal affairs of a resident or to protect and advocate for the rights of a resident; or

(C) The ombudsman or his or her designee, if no person has been designated or appointed in accordance with subparagraph (A) or (B) of this paragraph. (Mar. 16, 1989, D.C. Law 7-218, § 101, 36 DCR 534.)

Legislative history of Law 7-218. — Law 7-218, the "District of Columbia Long-Term Care Ombudsman Program Act of 1988," was introduced in Council and assigned Bill No. 7-334, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 29, 1988 and December 13, 1988, respectively. Signed by the

Mayor on January 6, 1989, it was assigned Act No. 7-293 and transmitted to both Houses of Congress for its review.

References in text. — The "Health-Care and Community Residence Facility, Hospice, and Home Care Licensure Act of 1983", referred to in paragraph (12), is D.C. Law 5-48.

Subchapter II. The Establishment of a Long-Term Care Ombudsman Program.

§ 6-3511. Purpose and functions.

There is established a Long-Term Care Ombudsman Program for the District of Columbia within the Office on Aging. The program shall provide a comprehensive continuum of advocacy services for older persons and other persons who are residents in the District, which shall include:

(1) Advocating for the rights of older persons and other persons who are residents;

(2) Investigating and resolving any complaint made by or on behalf of an older person or other person who is a resident; and

(3) Monitoring the quality of care, services provided, and quality of life experienced by older persons and residents to ensure that the care and services are in accordance with applicable District and federal laws. (Mar. 16, 1989, D.C. Law 7-218, § 201, 36 DCR 534.)

Section references. — This section is referred to in § 6-3501.

Legislative history of Law 7-218. — See note to § 6-3501.

§ 6-3512. Long-Term Care Ombudsman; appointment; vacancy.

(a) The program shall be administered by a full-time ombudsman and shall be under the Director of the Office on Aging (“Director”) or his or her designee. The Director shall appoint the ombudsman for a term of 2 years and approve of the designee of the ombudsman. The ombudsman shall be a resident of the District.

(b) The Director may contract with a nonprofit provider, other than the District government, to operate the program. The provider shall have experience advocating for the rights of older persons and residents. The ombudsman shall be an employee of the nonprofit provider.

(c) The Director shall ensure that the following are provided to the ombudsman or his or her designee to implement the provisions of this chapter:

(1) Legal counsel for advice and consultation;

(2) Legal representation, if legal action is taken to implement the provisions of this chapter; and

(3) Clerical and administrative support staff and materials.

(d) The primary responsibility of the ombudsman or his or her designee shall be the investigation and resolution of any complaint made by or on behalf of a resident. (Mar. 16, 1989, D.C. Law 7-218, § 202, 36 DCR 534.)

Section references. — This section is referred to in § 6-3501.

Legislative history of Law 7-218. — See note to § 6-3501.

§ 6-3513. Same — Training and experience.

(a) The ombudsman shall have training and experience in the following areas:

(1) Gerontology, long-term care, health care, or relevant social services program;

(2) The legal system;

(3) Dispute resolution techniques, including investigation, mediation, or negotiation; and

(4) Long-term care advocacy.

(b) No person who has been employed by a long-term care facility or a corporation that directly or indirectly owned or operated a long-term care facility within the past 2 years shall be an ombudsman.

(c) Neither the ombudsman nor any member of his or her immediate family shall have any pecuniary interest in a long-term care facility. (Mar. 16, 1989, D.C. Law 7-218, § 203, 36 DCR 534.)

Legislative history of Law 7-218. — See note to § 6-3501.

§ 6-3514. Same — Powers and duties.

(a) The ombudsman shall:

(1) Investigate and resolve complaints and concerns made by or on behalf of older persons and other residents in the District;

(2) Promote the well-being and quality of life of each resident;

(3) Encourage the development and the expansion of the activities of the program in all wards of the District, sufficient to serve the residents in those wards;

(4) Submit annually, to the Office on Aging for submission to the Council and the Mayor, a written report documenting the complaints received and resolved, and recommending policy, regulatory, or legislative changes;

(5) Enter into, on behalf of the Office on Aging and with the approval of the Director, written agreements of understanding, cooperation, and collaboration with any District government agency that provides funding, oversight, or inspection of, or operates a long-term care facility;

(6) Establish and implement program policies and procedures for eliciting, receiving, investigating, verifying, referring, and resolving complaints of residents;

(7) Develop an on-going program for publicizing the program;

(8) Identify, document, and address solutions to problems affecting residents;

(9) Serve as the legal representative for residents, pursuant to §§ 32-1432(e), 32-1433(a)(1), and 32-1437(a) and (b);

(10) Report any instance of suspected abuse, neglect, or exploitation of a resident to the Office of Adult Protective Services, within the Department of Human Services, and the Service Facility Regulation Administration, within the Department of Consumer and Regulatory Affairs, within 24 hours of receipt of a complaint or information concerning suspected abuse, neglect, or exploitation;

(11) Establish a system for coordinating a uniform District-wide system to record data on complaints and conditions in long-term care facilities;

(12) Monitor the development and implementation of district and federal laws, rules, regulations, and policies that affect residents;

(13) Make specific recommendations, through the Office on Aging, to the operator or agent of the operator of any long-term care facility, whenever the ombudsman believes that conditions which adversely affect the health, safety, welfare, or rights of a resident exist within the long-term care facility;

(14) Report to the appropriate enforcement agency any act of an operator of a long-term care facility that the ombudsman believes to be a violation of an applicable federal or District law, regulation, or rule;

(15) Establish and conduct a training program for persons employed by or associated with the program, which shall include training in the following areas:

- (A) The review of medical records;
- (B) Regulatory requirements for long-term care facilities;
- (C) Confidentiality of records;
- (D) Techniques of complaint investigation;
- (E) The effects of institutionalization; and
- (F) The special needs of the elderly;

(16) Assist in the formation, development, and use by residents, their families, and friends of forums that permit residents, their families, and friends to discuss and communicate, on a regular and continuing basis, their views on the strengths and weaknesses of the operation of the facility, the quality of care provided, and the quality of life fostered in long-term care facilities;

(17) Establish and maintain procedures to protect the confidentiality of the records of residents and long-term care facilities where access is authorized pursuant to § 6-3322;

(18) Prohibit any employee, designee, or representative of the program from investigating any complaint or representing the ombudsman, unless that person has received training in accordance with paragraph (15) of this subsection; and

(19) Designate local ombudsman programs to act on behalf of the ombudsman within specific geographical areas.

(b) No person, agency, or long-term care facility shall obstruct the ombudsman or his or her designee from the lawful performance of any duty or the exercise of any power. (Mar. 16, 1989, D.C. Law 7-218, § 204, 36 DCR 534; Feb. 5, 1994, D.C. Law 10-68, § 18, 40 DCR 6311.)

Section references. — This section is referred to in § 6-3501.

Effect of amendments. — D.C. Law 10-68 deleted the comma following “include” in (a)(15).

Legislative history of Law 7-218. — See note to § 6-3501.

Legislative history of Law 10-68. — Law 10-68, the “Technical Amendments Act of 1993,” was introduced in Council and assigned Bill No. 10-166, which was referred to the Commit-

tee of the Whole. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 23, 1993, it was assigned Act No. 10-107 and transmitted to both Houses of Congress for its review. D.C. Law 10-68 became effective on February 5, 1994.

References in text. — “Section § 6-3322,” referred to in (a)(17), does not appear in the D.C. Code. See § 6-3522.

§ 6-3515. Complaint investigation.

(a) The ombudsman and his or her designee shall have access to any record that is necessary to carry out his or her responsibilities under this chapter.

(b) The ombudsman or his or her designee may initiate an investigation of a long-term care facility independent of the receipt of a specific complaint. (Mar. 16, 1989, D.C. Law 7-218, § 205, 36 DCR 534.)

Legislative history of Law 7-218. — See note to § 6-3501.

§ 6-3516. Confidentiality of records and identities of residents.

(a) The program shall protect the confidentiality of the records of the residents and employees.

(b) No information or records maintained by the program shall be disclosed to the public.

(c) The program shall not disclose the identity of any complainant, resident involved in a complaint, witness, or representative of a resident, unless the complainant, resident, or representative of a resident authorizes the disclosure. (Mar. 16, 1989, D.C. Law 7-218, § 206, 36 DCR 534.)

Section references. — This section is referred to in § 6-3531.

Legislative history of Law 7-218. — See note to § 6-3501.

§ 6-3517. Immunity from liability.

(a) No employee, designee, or representative of the program shall be held liable for the good faith performance of responsibilities under this chapter, except that no immunity shall extend to criminal acts.

(b) No discriminatory, disciplinary, or retaliatory action shall be taken against an employee of a long-term care facility or agency, resident, or representative of the program, for any communication made to aid the program in carrying out its duties and responsibilities, unless the communication was made maliciously or in bad faith. This subsection shall not be construed to infringe upon the rights of an employer to supervise, discipline, or terminate an employee for other reasons.

(c) No communication made by the ombudsman or his or her designee, if reasonably related to the requirements of his or her responsibilities, shall be subject to civil action for libel or slander.

(d) A court may order the disclosure of information made confidential under this chapter, if it determines that the disclosure is necessary to enforce this chapter. (Mar. 16, 1989, D.C. Law 7-218, § 207, 36 DCR 534.)

Legislative history of Law 7-218. — See note to § 6-3501.

Subchapter III. Access to Long-Term Care Facilities and to Records.

§ 6-3521. Access to long-term care facilities.

(a) The operator of a long-term care facility shall permit the ombudsman or his or her designee access to the facility to:

(1) Visit, talk with, or make personal, social, or legal services available to all residents, or investigate complaints;

(2) Inform residents of their rights or entitlements, and corresponding obligations under applicable federal and District law by means of distribution of educational materials or discussion in groups and with individual residents;

(3) Assist residents in asserting their legal rights regarding claims for public assistance, medical assistance, social security benefits, or other matters in which residents are aggrieved; and

(4) Inspect all areas of the facility, except the living area of a resident who protests inspection.

(b) Access under this section shall be permitted between the hours of 8:00 a.m. and 8:00 p.m. daily, unless the nature of a complaint requires investigation at other times.

(c) Upon entering a long-term care facility in accordance with this section, the ombudsman or his or her designee shall promptly advise 1 of the following persons of his or her presence:

- (1) The administrator or acting administrator;
- (2) The residence director; or
- (3) Another available supervisory agent of the facility.

(d) A person who has access under this section shall not enter the living area of a resident without identifying him or herself to the resident and receiving the permission of the resident to enter.

(e) A resident shall have the right to terminate, at any time, any visit by a person or representative of the program who has access under this section.

(f) A communication between a resident and a person who has access under this section shall be confidential, unless the resident authorizes the release of the communication.

(g) No resident shall be punished or harassed by the operator of a facility or an agent or employee of the operator of the facility because of efforts of the resident to avail himself or herself of his or her rights pursuant to this chapter.

(h) A written notice, prescribed by the ombudsman, that describes the rights of a resident pursuant to this chapter and the telephone number of the ombudsman shall be posted in a conspicuous place at or near the entrance to the long-term care facility and on each floor of the facility.

(i) The operator of a long-term care facility shall provide each resident a personal written copy of the notice required under subsection (h). Each new resident shall be provided a written copy of the notice upon a admission.

(j) If a resident cannot read the notice required under subsection (h), the contents of the notice shall be communicated to that resident orally and in writing.

(k) The written notice required under subsection (h) shall be provided in the appropriate language to those residents who do not speak or understand English.

(l) A notation that personal notice, as required by subsection (i), has been provided shall be entered in the clinical record of each resident.

(m) Nothing in this section shall be construed to restrict any right or privilege of a resident to receive a visitor who is not a representative of a community organization, legal services program, or the program. (Mar. 16, 1989, D.C. Law 7-218, § 301, 36 DCR 534.)

Legislative history of Law 7-218. — See note to § 6-3501.

§ 6-3522. Access to records.

(a) Each District agency shall provide cooperation, assistance, data, and the access to records necessary to enable the ombudsman to perform his or her duties under this chapter and other applicable federal and District law. This section shall not be construed to supercede the laws or rules governing access to unexpurgated arrest records maintained by the Metropolitan Police Department or interfere with ongoing criminal investigations.

(b) The ombudsman or his or her designee shall have the same access that is provided to the Mayor to review, inspect, or photocopy the records of a resident of a facility covered by § 32-1301 et seq., or 32-1401 et seq., to carry out the provisions of this chapter.

(c) The ombudsman or his or her designee may request a subpoena pursuant to § 1-338, to obtain access to records covered by this section.

(d) An owner, employee, or agent of a long-term care facility who lawfully discloses information or permits access to records pursuant to this section shall not be liable for civil penalties or criminal prosecution. (Mar. 16, 1989, D.C. Law 7-218, § 302, 36 DCR 534.)

Section references. — This section is referred to in § 6-3531.

Legislative history of Law 7-218. — See note to § 6-3501.

*Subchapter IV. Enforcement; Penalties; Judicial Review.***§ 6-3531. Enforcement; penalties.**

(a) Civil fines, penalties, or related costs may be imposed against any long-term care facility, owner, executive officer, administrator, employee, or agent, for the violation of any provision of this chapter or any rule issued pursuant to this chapter.

(b) Procedures for adjudication and enforcement and applicable civil fines, penalties, or costs shall be those prescribed for a Class 2 civil infraction, pursuant to § 6-2701 et seq.

(c) If the ombudsman or his or her designee knowingly violates § 6-3516 by releasing a confidential document, record, or other information obtained pursuant to § 6-3522(b), the ombudsman or his or her designee may be prosecuted for a misdemeanor and, upon conviction, subject to a fine of not more than \$1,500, imprisonment for not more than 30 days, or both. (Mar. 16, 1989, D.C. Law 7-218, § 401, 36 DCR 534.)

Legislative history of Law 7-218. — See note to § 6-3501.

*Subchapter V. Private Rights of Action.***§ 6-3541. Injunctive relief.**

A resident, a representative of a resident, the ombudsman, or the Corporation Counsel may bring an action in court for a temporary restraining order,

preliminary injunction, or permanent injunction to enjoin a long-term care facility from violating a provision of subchapter II or III or any rule issued by the Mayor pursuant to this chapter. (Mar. 16, 1989, D.C. Law 7-218, § 501, 36 DCR 534.)

Section references. — This section is referred to in § 6-3543.

Legislative history of Law 7-218. — See note to § 6-3501.

§ 6-3542. Civil action for damages.

(a) A resident, a representative of a resident, or the ombudsman, on behalf of a resident, may bring an action in court to recover actual and punitive damages for an injury that results from a violation of subchapter II or III, or any rule issued by the Mayor pursuant to this chapter. Upon proof of a violation, the resident shall be awarded 3 times the actual damages or \$100, whichever is greater, and may be awarded punitive damages of up to \$5,000.

(b) The first \$3,000 of a damage award recovered by a resident in an action brought under this section shall be excluded from consideration when determining the eligibility of the resident for Medicaid, the amount of assistance the resident is entitled to under Medicaid, or the assets of the resident that the District may subject to a lien, set-off, or other legal process for the purpose of satisfying indebtedness created by the receipt of Medicaid or other public assistance payments. (Mar. 16, 1989, D.C. Law 7-218, § 502, 36 DCR 534.)

Section references. — This section is referred to in § 6-3543.

Legislative history of Law 7-218. — See note to § 6-3501.

§ 6-3543. Court costs and attorney's fees.

The court shall award costs and reasonable attorney's fees to a resident who prevails in an action brought under § 6-3541 or § 6-3542. (Mar. 16, 1989, D.C. Law 7-218, § 503, 36 DCR 534.)

Legislative history of Law 7-218. — See note to § 6-3501.

Subchapter VI. Miscellaneous.

§ 6-3551. Rules.

Within 90 days of March 16, 1989, the Mayor shall, pursuant to subchapter I of Chapter 15 of Title 1, issue proposed rules to implement the provisions of this subchapter. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved. (Mar. 16, 1989, D.C. Law 7-218, § 601, 36 DCR 534.)

Legislative history of Law 7-218. — See note to § 6-3501.

References in text. — “This act”, referred to in the first sentence, is D.C. Law 7-218.

Delegation of Authority Under D.C. Law

7-218, the “District of Columbia Long-Term Care Ombudsman Program Act of 1988”. — See Mayor’s Order 89-86, April 28, 1989.

CHAPTER 36. CHILD CARE SERVICES ASSISTANCE FUND.

Sec.

6-3601. Definitions.

6-3602. Child Care Services Assistance Fund; established.

6-3603. Sources of funding.

6-3604. Eligibility.

Sec.

6-3605. Repayment.

6-3606. Disclaimer of liability.

6-3607. Rules.

6-3608. Annual report by Mayor.

§ 6-3601. Definitions.

(a) "Child" means "child" as defined in § 3-301(1).

(b) "Child development center" means "child development center" as defined in § 3-301(2).

(c) "Child development home" means "child development home" as defined in § 3-301(3).

(d) "Fund" means the Child Care Services Assistance Fund established by § 6-3602.

(e) "Person" means an individual, partnership, association, or corporation. (Mar. 16, 1989, D.C. Law 7-220, § 2, 36 DCR 550.)

Legislative history of Law 7-220. — Law 7-220, the "Child Care Services Assistance Fund Act of 1988," was introduced in Council and assigned Bill No. 7-405, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on

November 29, 1988 and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-295 and transmitted to both Houses of Congress for its review.

§ 6-3602. Child Care Services Assistance Fund; established.

(a) There is established a revolving Child Care Services Assistance Fund, to be administered by the Mayor, for the purpose of providing loans and grants of up to \$10,000 to open new child care facilities or to expand, repair, or improve existing child care facilities in the District, including a child development center or a child development home.

(b) There is authorized to be appropriated out of the revenue of the District an amount necessary to carry out the purposes of this chapter. (Mar. 16, 1989, D.C. Law 7-220, § 3, 36 DCR 550.)

Section references. — This section is referred to in § 6-3601.

Legislative history of Law 7-220. — See note to § 6-3601.

Delegation of Authority Pursuant to D.C. Law 7-220, the "Child Care Services Assistance Fund Act of 1988". — See Mayor's Order 89-131, June 9, 1989.

§ 6-3603. Sources of funding.

The fund shall consist of, but not be limited to, money from the following sources:

(1) Appropriations;

(2) Grants or gifts from public or private sources to the fund or to the District for the purposes of the fund;

- (3) Repayments of principal and interest on loans provided from the fund;
- (4) Proceeds realized from the liquidation of a security interest held by the District on loans made from the fund;
- (5) Interest earned on the deposit or investment of money from the fund; and
- (6) All other revenue, receipts, or fees derived from the operation of the fund. (Mar. 16, 1989, D.C. Law 7-220, § 4, 36 DCR 550.)

Legislative history of Law 7-220. — See note to § 6-3601.

§ 6-3604. Eligibility.

(a) In order to be eligible for a loan or grant from the fund, the applicant shall:

(1) Be a District resident who is current in the payment of all taxes and other obligations owed to the District, except that a corporation, association, or partnership must be organized and doing business in the District;

(2) Obtain, from sources other than the fund, money to finance no less than 25% of the cost of the project; and

(3) Submit to the Mayor, for approval, a business plan, which shall include an estimated schedule for completion of the project, the estimated number of children to be served, and the designation of the proposed site in the District.

(b) Each project financed by the fund shall comply with § 5-1301 et seq., and the Child Development Facilities Regulation, effective December 14, 1974 (Regulation No. 74-34; 21 DCR 1333).

(c) The applicant shall obtain insurance as required by the Mayor and indemnify the District from any liability arising out of the operation of the facility.

(d) In order to be eligible for a grant from the fund, the applicant must be a non-profit organization. (Mar. 16, 1989, D.C. Law 7-220, § 5, 36 DCR 550.)

Legislative history of Law 7-220. — See note to § 6-3601.

§ 6-3605. Repayment.

(a) For each loan issued under this chapter, the Mayor shall arrange a repayment schedule.

(b) Each loan granted from the fund shall be recorded as a lien against the real and personal property of the applicant. (Mar. 16, 1989, D.C. Law 7-220, § 6, 36 DCR 550.)

Legislative history of Law 7-220. — See note to § 6-3601.

§ 6-3606. Disclaimer of liability.

A person who receives a loan or grant from the fund shall not be considered an agent or instrumentality of the District as a result of the receipt of the loan. (Mar. 16, 1989, D.C. Law 7-220, § 7, 36 DCR 550.)

Legislative history of Law 7-220. — See note to § 6-3601.

§ 6-3607. Rules.

Within 120 days of March 16, 1989, the Mayor shall, pursuant to subchapter I of Chapter 15 of Title 1, issue proposed rules to implement the provisions of this chapter. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved. (Mar. 16, 1989, D.C. Law 7-220, § 8, 36 DCR 550.)

Legislative history of Law 7-220. — See note to § 6-3601.

§ 6-3608. Annual report by Mayor.

The mayor shall submit to the Council, no later than 6 months after the end of each fiscal year, a report on the financial condition of the fund and the results of the operation of the fund for the fiscal year. (Mar. 16, 1989, D.C. Law 7-220, § 9, 36 DCR 550.)

Legislative history of Law 7-220. — See note to § 6-3601.

CHAPTER 37. LOW-LEVEL RADIOACTIVE WASTE GENERATOR REGULATORY POLICY.

Sec.

6-3701. Definitions.

6-3702. Reports.

6-3703. Registration; fee.

Sec.

6-3704. Fund; assessment.

6-3705. Citizen right of action.

6-3706. Rules.

§ 6-3701. Definitions.

For the purpose of this chapter, the term:

(1) "Disposal" means the permanent isolation of low-level radioactive waste as a regional disposal facility as defined in section 2 of the Low-level Radioactive Waste Policy Act, approved December 23, 1980 (94 Stat. 3347; 42 U.S.C. 2021b) ("Waste Policy Act").

(2) "Generator" means any public or private individual, institution, corporation, association, group, or other legally constituted enterprise that produces low-level radioactive waste in the District of Columbia ("District").

(3) "Low-level radioactive waste ('waste')" means radioactive material that:

(A) Is not high-level radioactive waste, spent nuclear fuel, transuranic waste, or byproduct material as defined in section 11e of the Atomic Energy Act of 1954, approved August 30, 1954 (68 Stat. 923; 42 U.S.C. 2014 (e)); and

(B) The United States Nuclear Regulatory Commission has classified, consistent with 10 CFR 61.55, as low-level radioactive waste.

(4) "Regional facility" means a low-level radioactive waste disposal facility in operation on January 1, 1985, or subsequently established and operated pursuant to the Waste Policy Act. (Mar. 7, 1991, D.C. Law 8-226, § 2, 38 DCR 219.)

Legislative history of Law 8-226. — Law 8-226, the "District of Columbia Low-Level Radioactive Waste Generator Regulatory Policy Act of 1990," was introduced in Council and assigned Bill No. 8-378, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 4, 1990, and December 18, 1990, respectively. Signed by the Mayor on December 27, 1990, it was assigned Act No. 8-309 and transmitted to both Houses of Congress for its review.

References in text. — The definition of low-level radioactive waste disposal facility in the Waste Policy Act, referred to in (4), is codified at 42 U.S.C. 2021b(11).

Delegation of Authority Pursuant to D.C. Law 8-226, the "District of Columbia Low-level Radioactive Waste Generator Regulatory Policy Act of 1990." — See Mayor's Order 94-102, April 28, 1994 (41 DCR 2523).

§ 6-3702. Reports.

(a) Pursuant to rules issued by the Mayor in accordance with § 6-3706, by May 15, 1991, and on February 1 of each subsequent year, any person who generates low-level radioactive waste in the District shall submit to the Mayor a report that details for the previous calendar year:

(1) The class and quantity of any waste generated, stored by the generator for decay or for later transfer to another facility, or transferred by the generator to another facility;

(2) The general type of generator (e.g., medical, university, industry, electric, utility, government, or nonprofit);

(3) Any additional information as the Mayor may require on the nature and characteristics of the waste (including chemical and physical characteristics, properties, or constituents, radionuclides present, curie content or concentration of radioactivity); and

(4) The extent of reduction in quantity and the nature and extent of reduction or other change in nature of characteristics of the waste as a result of treatment or interim storage after generation and before delivery to a facility for permanent disposal of the waste.

(b) The Mayor shall, pursuant to rules issued in accordance with § 6-3706, provide the appropriate procedures for the preparation and submission of the report when more than one person is the generator of the same waste.

(c) Any generator who fails to report as required by this section shall be fined an amount not to exceed \$5,000 for each day of noncompliance and may be required to forfeit any right, license, permit, or privilege to possess radioactive materials in the District.

(d) Beginning on July 1, 1991, and on April 1 of each subsequent year, the Mayor shall submit to the Council of the District of Columbia, a report that summarizes and categorizes by type of generator, the nature, characteristic, and quantity of waste generated in the District during the previous calendar year. (Mar. 7, 1991, D.C. Law 8-226, § 3, DCR 219.)

Legislative history of Law 8-226. — See note to § 6-3701.

§ 6-3703. Registration; fee.

Pursuant to rules issued by the Mayor in accordance with § 6-3706, beginning in 1991, any person who generates waste in the District shall register annually with the Mayor on a form prescribed by the Mayor and pay an annual registration fee to be established by the Mayor. Any generator who fails to register as required by this section shall be fined an amount not to exceed \$5,000 for each day of noncompliance and may be required to forfeit any right, license, permit, or privilege to possess radioactive materials in the District. (Mar. 7, 1991, D.C. Law 8-226, § 4, 38 DCR 219.)

Legislative history of Law 8-226. — See note to § 6-3701.

§ 6-3704. Fund; assessment.

(a) There is established within the District Treasury a nonlapsing revolving fund to be know as the Low-Level Radioactive Waste Fund (“Fund”). The Fund shall consist of any revenue collected pursuant to this chapter and any funds paid to the District pursuant to § 5(d)(2) of the Waste Policy Act (42 U.S.C. 2021e(d)(2)). Any revenue deposited in the Fund shall be used exclusively to offset the District’s actual and operating expenses for the disposal of waste generated in the District at a regional facility.

(b) The Mayor shall establish reasonable rates and fees to be paid by any generator for the disposal of waste generated in the District at any regional facility to fully recover all costs of the District including actual and operating expenses. The fee shall be apportioned by the category of generator and the amount of waste disposed of by individual generators within each category annually, except that the total amount assessed nonprofit educational institutions and nonprofit health care providers shall not exceed 45% of the District's total annual cost. Full remittance of each annual assessment shall be made to the District within a reasonable time period to be established by the Mayor and be accompanied by any report or other documentation as the Mayor may require. Any generator who fails to make full remittance within the required time period shall be assessed a penalty not to exceed the full amount of the delinquent annual assessment. (Mar. 7, 1991, D.C. Law 8-226, § 5, 38 DCR 219.)

Legislative history of Law 8-226. — See note to § 6-3701.

§ 6-3705. Citizen right of action.

Any person aggrieved by the failure of a generator of low-level radioactive waste in the District to comply with this chapter may sue for relief in any court of competent jurisdiction. The court may grant any declaratory or injunctive relief it deems necessary. Reasonable attorney's fees and court costs may be awarded to the prevailing party, other than the District government, for actions brought under this section. (Mar. 7, 1991, D.C. Law 8-226, § 6, 38 DCR 219.)

Legislative history of Law 8-226. — See note to § 6-3701.

§ 6-3706. Rules.

By May 1, 1991, the Mayor shall, pursuant to subchapter I of Chapter 15 of Title 1, issue rules to implement the provisions of this chapter including rules regarding rates, fee and payment schedules, registration forms, reporting guidelines, and other operational provisions deemed necessary to fully implement and enforce the provisions of this chapter. (Mar. 7, 1991, D.C. Law 8-226, § 7, 38 DCR 219.)

Section references. — This section is referred to in §§ 6-3702 and 6-3703.

Legislative history of Law 8-226. — See note to § 6-3701.



